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

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Pursuant to S.Ct.Prac.R. 17.08, Appellant, the Office of the Ohio Consumers' Counsel ("OCC"), hereby identify the following additional authorities that may be relied upon during oral argument:

(1) *In re: Columbus Southern Power Co. for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code*, Pub. Util. Comm. No. 11-4920-EL-AIR, et al., Finding and Order (Aug. 1, 2012).

(2) *In re Columbus Southern Power Co. for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code*, Pub. Util. Comm. No. 11-4920-EL-AIR, et al., Fifth Entry on Rehearing (Oct. 3, 2012).

The oral argument in this matter is scheduled for October 8, 2013. For the convenience of the Court, the additional authority is attached.

Respectfully submitted,

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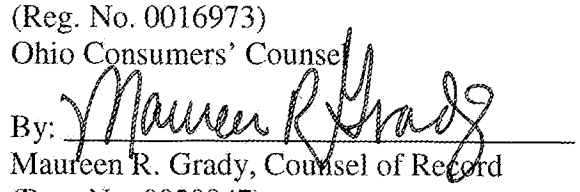
By: 
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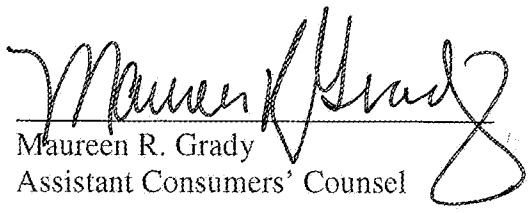
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *List of Additional Authorities* has been served upon the below-named counsel via electric transmission this 20th day of September, 2013.



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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

(1) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company)[1] are public utilities and electric light companies within the definitions of Sections 4905.02 and 4905.03(A)(3), Revised Code, and, as such, are subject to the jurisdiction of this Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

(2) On March 18, 2009, the Commission issued its opinion and order regarding the application of CSP and OP for an electric security plan (ESP) in Case No. 08-917-EL-SSO and 08-918-EL-SSO (ESP 1 Order). Entries on rehearing were issued on July 23, 2009 (First ESP 1 Entry on Rehearing) and November 4, 2009. In the ESP 1 Order, the Commission directed AEP-Ohio, pursuant to Section 4928.144, Revised Code, to phase-in a portion of the rate increase authorized over an established percentage for each year of the ESP, in order to mitigate the impact of the rate increase for customers.[2] The Commission authorized AEP-Ohio to

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1 By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP. *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.

2 ESP 1 Order at 22-23.

establish a regulatory asset to record and defer fuel expenses with carrying costs, at the weighted average cost of capital (WACC), with recovery through a nonbypassable surcharge to commence in 2012 and continue through 2018.[3] The ESP 1 Order was appealed to the Ohio Supreme Court and subsequently remanded to the Commission for further proceedings.

(3) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer pursuant to Section 4928.141, Revised Code.[4] The application sought approval of a second ESP in accordance with Section 4928.143, Revised Code, to begin on January 1, 2012.

(4) On September 1, 2011, in the above-captioned cases, AEP-Ohio filed an application for approval of a mechanism to recover its deferred fuel costs, as directed by the Commission in the ESP 1 Order. Specifically, AEP-Ohio requests approval of the creation of a recovery mechanism, in the form of a nonbypassable phase-in recovery rider (PIRR), to ensure recovery of its accumulated deferred fuel costs, including carrying costs, as approved by the Commission in the ESP 1 Order. AEP-Ohio proposed that the PIRR take effect with the first billing cycle of January 2012.

AEP-Ohio notes that its application includes a proposed recovery and amortization schedule for OP's total deferral for the period of January 2012 through December 2018. AEP-Ohio further notes that a forecasted over-recovery for CSP would be returned to customers pursuant to its fuel adjustment clause (FAC) filing occurring on March 1, 2012, with the adjusted FAC rates effective with the first billing cycle of April 2012.

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3 ESP 1 Order at 20-23; First ESP 1 Entry on Rehearing at 6-10.

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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* 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 Approval of Certain Accounting Authority,* Case No. 11-349-EL-AAM and 11-350-EL-AAM.

AEP-Ohio indicates that it plans to make annual filings by December 1 of each year, beginning in 2012, during the planned collection period, if necessary, to adjust the PIRR rate to recover the actual balance over the remaining term of the recovery period. Subsequent to the end of the collection period, AEP-Ohio notes that it intends to make a final true-up filing. Finally, AEP-Ohio states that it will file new schedules, if necessary, upon Commission action on the merger of CSP and OP.

(5) In support of its application, AEP-Ohio states as follows:

(a) In the ESP 1 Order, the Commission directed AEP-Ohio to mitigate the rate impacts of FAC increases by deferring the portions of its FAC costs in excess of the allowable total bill increase percentage levels.

(b) The Commission also authorized AEP-Ohio to record and defer carrying costs on the fuel deferrals, both during the three-year term of the ESP and during the subsequent seven-year amortization and collection period. The Commission found that the carrying costs should be calculated based on the WACC rate of 11.15 percent, as proposed by AEP-Ohio.

(c) The Commission found that the fuel deferrals should be calculated on a gross-of-tax basis to ensure that AEP-Ohio recovers its actual fuel expenses.

(d) The Commission ordered that any deferred fuel expenses, including associated carrying costs, remaining at the end of 2011 would be recovered via an unavoidable surcharge.

(e) Section 4928.144, Revised Code, authorizes the Commission to approve a reasonable phase-in of any electric utility rate or price established, pursuant to 4928.143, Revised Code, with carrying charges, through the creation of regulatory assets and collected through an unavoidable surcharge. Pursuant to its statutory

authority, the Commission ordered such a phase-in of the increases approved in the ESP 1 Order.

(f) In the First ESP 1 Entry on Rehearing, the Commission rejected the arguments of certain intervenors regarding AEP-Ohio's methodology, including use of the WACC rate, and the tax treatment of the deferrals. According to AEP-Ohio, no party appealed these issues.

(6) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),[5] including the above-captioned cases. The ESP 2 Stipulation included provisions regarding the establishment and terms of AEP-Ohio's PIRR, as well as the securitization of the PIRR regulatory assets.

(7) Pursuant to an entry issued on September 16, 2011, the consolidated cases were consolidated for the purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedule in the pending cases, including the present proceedings, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(8) On October 3, 2011, the Commission issued an order on remand (ESP 1 Remand Order), addressing the Ohio Supreme Court's remand of the ESP 1 Order.

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5 *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; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders,* Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders,* Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company,* Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code,* Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code,* Case No. 11-4921-EL-RDR.

(9) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation. The Commission did not modify the PIRR provisions of the ESP 2 Stipulation.

(10) On January 23, 2012, in Case No. 09-872-EL-FAC, *et al.*, the Commission issued its opinion and order regarding the annual audit of AEP-Ohio's FAC mechanism for 2009 (FAC Order).[6] In its audit report, Energy Ventures Analysis, Inc. recommended that the Commission consider whether any proceeds from a settlement agreement that American Electric Power Service Corporation had executed with a coal supplier in 2007 (settlement agreement) should be credited against OP's FAC under-recovery for 2009. The settlement agreement was effectively a buy-out of the contract with the coal supplier after 2008. Pursuant to the terms of the settlement agreement, OP received a lump sum payment (made in three equal payments) and coal reserve in West Virginia. In the FAC Order, the Commission determined that all of the realized value from the settlement agreement should be credited against OP's FAC under-recovery for 2009. The Commission specified that the portion of the $30 million lump sum payment not already credited to the ratepayers of OP, as well as the $41 million value of the West Virginia coal reserve booked when the settlement agreement was executed, should be credited against the FAC under-recovery. Additionally, because the present value of the West Virginia coal reserve is unknown and the permitting process is expected to enhance its value, the Commission indicated that a request for proposal would be issued by subsequent entry to hire an auditor to examine the value of the West Virginia coal reserve. The Commission noted that the auditor would be expected to make a recommendation as to whether the increased value of the West Virginia coal reserve, if any, above the $41 million already required to be credited against OP's FAC under-recovery should accrue to ratepayers.

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6 *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC, *et al.*

(11) On February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part. Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation, on grounds unrelated to the PIRR provisions. The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its first ESP.

(12) By entry issued on March 14, 2012, the attorney examiner found that, in light of the Commission's rejection of the ESP 2 Stipulation, the present cases should move forward, and a comment period should be established in order to assist the Commission in its review of AEP-Ohio's application. Pursuant to the entry, initial and reply comments were due to be filed by April 2, 2012, and April 17, 2012, respectively.

(13) Motions to intervene in the above-captioned cases were filed on various dates by Ohio Partners for Affordable Energy; Industrial Energy Users-Ohio (IEU-Ohio); Interstate Gas Supply, Inc.; Ohio Consumers' Counsel (OCC); Ormet Primary Aluminum Corporation (Ormet); Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council; Ohio Energy Group (OEG); Ohio Hospital Association; Ohio Farm Bureau Federation; OMA Energy Group; and The Kroger Company. No memoranda contra were filed. The Commission finds that the motions to intervene are reasonable and should be granted.

(14) On March 13, 2012, motions for admission *pro hac vice* were filed by Emma F. Hand on behalf of Ormet in Case No. 11-4920-EL-RDR and by Dan Barnowski on behalf of Ormet in Case No. 11-4921-EL-RDR. No memoranda contra were filed. The Commission finds that the motions for admission *pro hac vice* are reasonable and should be granted.

(15) In accordance with the procedural schedule established in these cases, timely initial comments were filed by IEU-Ohio, OCC, OEG, Ormet, and Staff on April 2, 2012. Staff filed revised comments on April 3, 2012.

(16) Timely reply comments were filed by AEP-Ohio, OCC, and Ormet on April 17, 2012.

Staff Comments

(17) Staff concludes that the Commission should approve AEP-Ohio's application, with modifications to incorporate four specific recommendations contained in Staff's revised comments. First, Staff recommends that, once collection of AEP-Ohio's deferrals begins, the carrying charges should be calculated using the most recently approved long-term debt rate of 5.34 percent rather than the WACC rate proposed by the Company. Staff notes that, in the ESP 1 Order, the Commission indicated that the WACC rate is appropriate during the deferral period but did not address the rate that should be used once the collection commences. Staff agrees that the pre-tax WACC rate should be used to determine the amount that AEP-Ohio is entitled to collect from ratepayers during the deferral period. However, Staff believes that, once the principal amount is determined for the calendar year ending 2011, AEP-Ohio's long-term debt rate should apply, because the Company no longer has any collection risk. Staff notes that use of the long-term debt rate over the remaining seven-year period of OP's deferral would result in a total cost to customers of $642,417,274 rather than a total cost of $772,603,180 if the WACC rate is applied, saving ratepayers $130,185,906 in carrying costs.

In its reply comments, AEP-Ohio argues, as an initial matter, that the Commission lacks the authority or discretion to delay recovery of the deferrals, modify the carrying charges, apply a net-of-tax recovery approach, or otherwise amend the Company's phase-in plan, as approved in the ESP 1 Order pursuant to Section 4928.144, Revised Code. AEP-Ohio contends that the ESP 1 Order is final, non-appealable, and cannot now be modified by the Commission as recommended

by Staff and intervenors. AEP-Ohio notes that the Commission adopted the phase-in plan proposed by the Company, with the only exception being that the Commission lowered the rate caps that would trigger the deferral of fuel expenses. AEP-Ohio further notes that the Company, in its modified ESP proposal filed in 11-346, recommends that the amortization period be modified such that recovery of the deferrals not begin until June 2013. According to AEP-Ohio, the Company only agrees to this modification if the Commission adopts the modified ESP proposal in its entirety. AEP-Ohio asserts that, if the Commission resolves the issues raised in these cases apart from 11-346, it must adhere to Section 4928.144, Revised Code, and the ESP 1 Order, which authorized recovery of the deferrals with carrying costs by means of a nonbypassable charge beginning in 2012 and continuing through 2018.

With respect to the calculation of the carrying charges, AEP-Ohio argues that, in the ESP 1 Order, the Commission specifically approved its proposal to use the WACC rate over the entire 10-year period of the phase-in plan. AEP-Ohio notes that the Commission rejected arguments against the WACC rate on rehearing and that no party subsequently challenged any aspect of the phase-in plan on appeal to the Ohio Supreme Court. As the ESP 1 Order is thus final and non-appealable, AEP-Ohio maintains that it is legally entitled to immediate implementation of the PIRR, which must incorporate a WACC rate for both the deferral and amortization periods as proposed by the Company and approved by the Commission. AEP-Ohio adds that Staff's recommendation ignores the true impact of applying a debt rate to the regulatory asset. If the long-term debt rate is used, AEP-Ohio argues that its capital structure should be adjusted to reduce the amount of long-term debt by a corresponding amount of the regulatory asset. Without such an adjustment, AEP-Ohio asserts that there would effectively be a double counting of the use of long-term debt as a funding source. AEP-Ohio notes that the necessary adjustment would result in a much lower percentage of long-term debt in the capital structure and raise the cost of capital. Additionally,

AEP-Ohio contends that Staff fails to recognize that the deferrals were funded with a combination of debt and equity. AEP-Ohio notes that, in 2009, OP received $550 million in equity from its parent company when it became evident that there would be fuel deferrals that would be recovered over a number of years.

(18) Staff's second recommendation is that the deferral balance at the end of December 2011 should be reduced for accumulated deferred income taxes (ADIT) in the calculation of carrying costs. Staff notes that the difference between the amount of fuel costs deducted for income tax purposes and the amount of fuel costs that have been deferred for regulatory accounting purposes has created a temporary tax timing difference that results in the deferred fuel ADIT. Staff states that the amount of the ADIT that is directly related to the deferred fuel balance represents net tax savings that effectively finance a portion of the deferred fuel balance and that there are no carrying costs associated with the ADIT. Staff contends that the ADIT are a cost-free source of funding for the deferred fuel balance that is provided by ratepayers and not investors. Staff concludes that an ADIT adjustment should have been reflected as a reduction to the principal deferred fuel balance for purposes of the carrying cost calculation at the end of each year of the ESP period of 2009 through 2011. Staff notes that its recommendation is consistent with the financial auditor's report in AEP-Ohio's most recent FAC case.[7]

Staff further notes that there is a difference between applying a gross-of-tax WACC rate and adjusting the deferred fuel balance to account for the income tax savings represented by the ADIT in the calculation of carrying costs. Staff believes that failure to account for the ADIT constitutes a violation of the regulatory principle providing that investors are only entitled to earn a return on balances that they have financed. If the gross-of-tax WACC rate is applied to the entire deferred fuel balance, Staff argues that investors would earn a return on a portion of the deferred fuel balance that they have not

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7 *In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters for 2010*, Case No. 10-268-EL-FAC, *et al.*

financed but that has instead been effectively financed by the directly related income tax savings represented by the ADIT. Staff notes that, based on AEP-Ohio's ADIT for 2010, which was the most recent information available, OP's ratepayers would save an additional $34,653,615 in carrying costs at the long-term debt rate with even greater savings at the pre-tax WACC rate during the deferral period. Staff concludes that, at a minimum, AEP-Ohio's fuel deferral balance existing as of the end of 2011 should be reduced by the amount of the most recent ADIT reflected in the Federal Energy Regulatory Commission (FERC) Form 1 for 2011 for OP and CSP, which was not yet publicly available when Staff filed its comments, but was expected to be filed with FERC by April 18, 2012.

AEP-Ohio replies that the Commission approved its proposed phase-in plan on a gross-of-tax basis in the ESP 1 Order, which is a final, non-appealable order that cannot be modified. AEP-Ohio also argues that Section 4928.144, Revised Code, requires the Commission to authorize the deferral of incurred costs equal to the amount not collected, with carrying charges, and does not permit adjustment for tax effects. AEP-Ohio notes that the Commission rejected intervenors' ADIT argument in the ESP 1 Order and instead approved a gross-of-tax calculation to ensure that the Company recovered its actual fuel expenses in compliance with the statute. AEP-Ohio adds that the auditor's identification of the ADIT issue in its audit report for 2010 is of no consequence, given that the audit is performed under Staff's direction and has no bearing on the governing statute or the ESP 1 Order. AEP-Ohio further argues that its phase-in plan, as proposed by the Company and approved by the Commission in the ESP 1 Order, included no ADIT adjustment to the regulatory asset to be recovered and no adjustment for the purpose of calculating the carrying charges to be applied. AEP-Ohio notes that Company witness Assante, in describing the proposed phase-in plan, explained that it would be inappropriate to adjust for ADIT in a situation not involving a traditional rate base approach to ratemaking.

(19) Staff also recommends that AEP-Ohio should be required to calculate its deferred fuel balance on a going-forward basis using annual compounding rather than monthly compounding, which would be consistent with the Commission's recognition of an annual interest rate in the Company's rate of return allowance. Staff notes that this adjustment, in combination with Staff's proposed long-term debt rate and ADIT reduction, would save OP's ratepayers an additional $23,915,797 in carrying charges over the seven-year recovery period. In their reply comments, OCC and Ormet support Staff's recommendation.

According to AEP-Ohio, the Commission has routinely approved of the calculation of carrying charges on a monthly basis with respect to the Company's riders, most recently its distribution asset recovery rider.[8] AEP-Ohio contends that monthly compounding more accurately reflects its carrying costs. AEP-Ohio adds that Staff's recommendation is result-oriented and not based on regulatory principle or practice.

(20) Finally, Staff recommends that AEP-Ohio be directed to make annual informational filings detailing the deferred fuel recorded on its books during the seven-year recovery period. According to Staff, such filings should include a breakdown of the status of collections per rate class and by operating company and the corresponding ending deferral balance. Staff proposes that the annual informational filings be based on the calendar year and filed on March 15 of the succeeding year. OCC urges the Commission to adopt Staff's recommendation and require that the annual informational filings be made in a docketed case. In its reply comments, AEP-Ohio notes that it does not oppose Staff's recommendation.

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8 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, *et al.*

Intervenor Comments

OCC

(21) OCC contends that the Commission cannot approve the PIRR because it is based on ESP rates that were not just and reasonable as required by Section 4928.143(B)(2)(a), Revised Code, and a phase-in plan that is likewise not just and reasonable, contrary to Section 4928.144, Revised Code. Specifically, OCC argues that the deferral balance is overstated because AEP-Ohio's provider of last resort charges, which were ultimately rejected by the Commission in the ESP 1 Remand Order, are embedded in the deferral. OCC asserts that the Commission should reduce the unamortized deferral balance by $368 million, plus carrying charges, to account for the unlawful charges that accrued from April 2009 through May 2011. OCC notes that this adjustment would also reduce carrying charges on a going forward basis.

AEP-Ohio responds that the Commission has already rejected this argument in the ESP 1 Remand Order and should do so again here. AEP-Ohio contends that OCC and other intervenors seek to use the PIRR as a means to accomplish unlawful retroactive ratemaking.

(22) OCC next argues that the annual FAC audit proceedings are the only means by which the Commission can determine whether AEP-Ohio's fuel costs were prudently incurred and reasonable in accordance with Section 4928.143(B)(2)(a), Revised Code. OCC notes that any adjustments or disallowances resulting from these annual audits must be reflected in the PIRR rates. OCC adds that, in AEP-Ohio's FAC audit proceedings for 2009, the Commission ordered that significant reductions be made to OP's fuel costs and directed that the Company's West Virginia coal reserve be valued, which could further reduce the deferral balance. Because the deferral balance and carrying costs will be impacted by such adjustments in the audit proceedings, OCC believes that, if the PIRR is approved, it must be subject to refund or reconciliation so as to protect consumers and provide for a remedy in the event that OCC prevails in its appeal of the

ESP 1 Remand Order, which is pending before the Ohio Supreme Court.

AEP-Ohio argues that there is no need for the PIRR to be subject to refund because the underlying regulatory asset will be modified, as necessary, to reflect the Commission's orders in the FAC audit proceedings. AEP-Ohio notes that its application provides that, subsequent to the end of the collection period, the Company will make a final true-up filing. AEP-Ohio also points out that its FAC rates are collected subject to the outcome of the annual audits and that the FAC deferrals will be properly accounted for and reconciled with the Commission's decision in each audit proceeding, such as the Commission directed in the FAC Order. According to AEP-Ohio, there is no practical reason to implement the PIRR rates subject to refund, given the seven-year recovery period, the annual PIRR filings, and the fact that the audit for 2011, which is the final audit, is already underway. Additionally, AEP-Ohio asserts that the Commission lacks the authority to unilaterally implement the PIRR rates subject to refund.

(23) Additionally, OCC asserts that AEP-Ohio's proposed amortization schedule, which covers the timeframe from 2012 through 2018, does not comply with the ESP 1 Order, which directed that the recovery of the deferral should occur from 2012 to 2018. OCC notes that AEP-Ohio's proposed schedule would result in carrying costs for an additional 12-month period. OCC further argues that the ESP 1 Order does not require that recovery occur over the entire six-year period and that the Commission should impose a shorter recovery period so as to reduce the carrying charges that customers will pay.

AEP-Ohio responds that, in the ESP 1 Order, the Commission approved a phase-in plan for a 10-year period, with a three-year deferral period and a seven-year recovery period to begin in the first billing cycle of 2012 and end in the last billing cycle of 2018.

(24) Like Staff, OCC suggests that, once collection of the deferral balance begins, the carrying charges should be calculated

based on AEP-Ohio's long-term cost of debt rate rather than its WACC rate, as there is less risk of non-collection at that point. OCC further recommends that the carrying costs on the deferral balance should be calculated with a reduction to account for ADIT. OCC contends that these adjustments are consistent with Commission precedent.

(25) Finally, OCC argues that the over-collection of CSP's fuel costs should be returned with interest to customers as soon as possible rather than through AEP-Ohio's quarterly FAC adjustment proceeding in March 2012. In its reply comments, AEP-Ohio points out that CSP actually experienced an under-recovery of $15 million at the end of 2011, which the Company now seeks to collect from customers.

IEU-Ohio

(26) As an initial matter, IEU-Ohio notes that, if the Commission authorizes a recovery mechanism, it must also determine that the PIRR is subject to reconciliation and provide a process for adjusting the PIRR to account for any future orders that may impact the deferral balance.

(27) IEU-Ohio argues that amortization of AEP-Ohio's deferral balance should be based on a debt rate rather than the Company's WACC rate, which is consistent with common regulatory practice and Commission precedent, given the decreased risk associated with collection of a nonbypassable charge. IEU-Ohio recommends that 3.1 percent be used as the debt rate, which, according to IEU-Ohio, is the approximate interest rate for newly issued seven-year BBB rated corporate bonds. In its reply comments, OCC agrees with IEU-Ohio's recommended debt rate.

(28) Like Staff, IEU-Ohio also believes that the PIRR must account for the ADIT. IEU-Ohio asserts that, even if the Commission does not require a recalculation of the carrying charges that have accrued on the deferral balance to date, the Commission should direct AEP-Ohio to calculate carrying charges net of ADIT during the amortization period.

(29) IEU-Ohio further argues that the PIRR must be adjusted to account for the effects of other proceedings. According to IEU-Ohio, AEP-Ohio should be directed to reduce the deferral balance and the associated carrying charges that have accrued with respect to the lump sum payment and West Virginia coal reserve, as the Commission ordered in its opinion and order in the annual audit proceedings for 2009. Ormet agrees that AEP-Ohio must reduce the deferral balance in compliance with the Commission's order. Additionally, IEU-Ohio contends that the PIRR must account for the flow through effects of the Court's remand of the ESP 1 Order, as well as the amounts that the Company temporarily collected pursuant to the ESP 2 Stipulation before it was rejected by the Commission. In its reply comments, Ormet argues that the PIRR should be subject to refund pending the outcomes of the various proceedings that could affect the deferral balance.

(30) Finally, IEU-Ohio notes that CSP's customers should not be subject to the PIRR, given that there is no deferral balance for CSP. IEU-Ohio agrees with AEP-Ohio's proposal to assign revenue responsibility for the PIRR exclusively to OP's customers, which IEU-Ohio contends is consistent with the regulatory principle of aligning costs and benefits.

OEG

(31) OEG argues that AEP-Ohio should be required to reduce its deferred fuel costs by the relevant ADIT amount in calculating its monthly carrying costs during the recovery period. OEG notes that AEP-Ohio's failure to account for ADIT would require customers to pay more than the Company's actual financing costs on the deferred fuel costs by ignoring the avoided financing costs from the tax savings. OEG further notes that its recommendation that AEP-Ohio subtract the related ADIT from the Company's deferred fuel costs is consistent with standard regulatory practice and generally accepted accounting principles, as well as Section 4928.144, Revised Code. Although OEG believes that AEP-Ohio's failure to account for ADIT during the deferral period was inconsistent with the ESP 1 Order, OEG seeks only to correct the calculation prospectively during the recovery

period. According to OEG, AEP-Ohio has recognized in other proceedings that it is appropriate to subtract ADIT in the determination of cost-based rates. OEG adds that, in AEP-Ohio's recent FAC proceedings, the auditor found that the Company should have reduced the fuel deferrals by the amount of ADIT.

(32) OEG further argues that the Commission should clarify that AEP-Ohio can securitize its deferred fuel expenses as soon as possible, pursuant to Section 4928.231, Revised Code, to ensure that customers benefit from the significant savings that would result from securitization over the seven-year recovery period. OCC disagrees, noting that OEG's recommendation is premature at this point because AEP-Ohio cannot comply with the filing requirements of Section 4928.231(B), Revised Code, until the Commission decides these cases and other related pending matters. Addressing the issue of securitization, AEP-Ohio points out that its right to begin recovery of the deferrals is independent of any initiative to recover any remaining deferred costs through securitization.

(33) Finally, OEG asserts that, if the Commission establishes a blended FAC rate in light of the merger of OP and CSP, all of AEP-Ohio's customers should pay for the deferred fuel costs. OEG believes that all customers should pay the same FAC rate and the same deferred fuel cost recovery. In its reply comments, Ormet disagrees with OEG's position and argues that a blended PIRR rate would violate the principle of cost causation. According to Ormet, the deferral balance relates to costs caused by OP's customers prior to the merger, which CSP's customers should not have to pay.

Ormet

(34) Like the other intervenors, Ormet maintains that the carrying charges on the deferral balance should reflect AEP-Ohio's long-term cost of debt, once amortization begins, consistent with Commission precedent. Ormet argues that the Commission's approval of the WACC rate was limited to the ESP period of 2009 through 2011, and that AEP-Ohio has less risk of recovery once collection of the deferral is underway.

Ormet believes that the Commission should exercise its discretion pursuant to Section 4928.144, Revised Code, to reduce the carrying charges and avoid a harmful rate increase to customers, including Ormet, that continue to struggle in the poor economic climate. Ormet also contends that the deferral balance should be reduced to reflect the ADIT. Ormet believes that this adjustment would ensure that AEP-Ohio recovers its actual costs as well as provide significant relief to ratepayers. In its reply comments, Ormet adds that, if collection of the PIRR is deferred, carrying charges should be calculated on the basis of AEP-Ohio's long-term cost of debt.

Conclusion

(35) Upon review, the Commission finds that AEP-Ohio's application for a mechanism to recover its deferred fuel costs is, for the most part, consistent with the phase-in plan authorized in the ESP 1 Order[9] and should, therefore, be approved, to the extent set forth herein. Accordingly, the Commission finds that AEP-Ohio's proposed PIRR should be established, consistent with the phase-in plan authorized in the ESP 1 Order and this finding and order, pursuant to Section 4928.144, Revised Code.

In the ESP 1 Order, the Commission directed AEP-Ohio, pursuant to Section 4928.144, Revised Code, to phase in any increase authorized over an established percentage for each year of the ESP as a means to mitigate the impact of the rate increase for customers. The Commission authorized AEP-Ohio to establish a regulatory asset to record and defer fuel expenses, with carrying costs at the pre-tax WACC rate of 11.15 percent, and recovery through a nonbypassable surcharge to commence on January 1, 2012, and continue through December 31, 2018. As required by the statute, the Commission ordered that any deferred FAC expense balance remaining at the end of 2011 would be recovered through the unavoidable surcharge, thereby approving recovery of the regulatory asset. The Commission, however, does not agree

9 ESP 1 Order at 20-24.

with AEP-Ohio that the ESP 1 Order cannot be modified in any way by the Commission. On the contrary, AEP-Ohio's ESP, including the phase-in plan, is subject to the ongoing supervision and jurisdiction of the Commission. Although the Commission generally approved AEP-Ohio's proposed phase-in plan and authorized recovery of its deferred fuel expenses in the ESP 1 Order, the order also contemplated that the Company would file a separate application to establish a recovery mechanism, which the Company in fact filed in these cases on September 1, 2011, and is presently the subject of our review.

In response to the recommendations made by Staff and intervenors, the Commission finds that AEP-Ohio should be authorized to collect carrying charges on the deferral balance based on the WACC rate, but only until such time as the recovery period begins. Thereafter, AEP-Ohio should be authorized to collect carrying charges at its long-term cost of debt rate. AEP-Ohio argues that, in the ESP 1 Order, the Commission effectively approved its use of the WACC rate during both the deferral and collection periods, as proposed by the Company in those proceedings, because the Commission expressly modified only the rate caps and no other component of the Company's proposed phase-in plan. However, the Commission agrees with Staff and intervenors that it is unreasonable for the WACC rate to be imposed on the deferral balance after collection begins, particularly during this period of lingering economic recession. Once collection begins, the risk of non-collection is significantly reduced and, as such, it is more appropriate to use the long-term cost of debt rate, which is consistent with sound regulatory practice and longstanding Commission precedent.[10] Further, since the ESP 1 Order, the General

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10 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company's Transmission Cost Recovery Rider*, Case No. 08-1202-EL-UNC, Finding and Order (December 17, 2008); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Modify Their Accounting Procedure for Certain Storm-Related Services Restoration Costs*, Case No. 08-1301-EL-AAM, Finding and Order (December 19, 2008); *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012).

Assembly has provided electric utilities with new authority to securitize regulatory assets to reduce long-term borrowing costs to be recovered from ratepayers. See Sections 4928.23 through 4928.2318, Revised Code. The Commission encourages AEP-Ohio to pursue these options as expeditiously as possible. For these reasons, the Commission finds it necessary to depart from our approval in the ESP 1 Order of AEP-Ohio's proposed carrying cost rate. The Commission may change course, provided that it justifies the reversal. As the Ohio Supreme Court has often stated, the Commission may change or modify earlier orders as long as it justifies any changes.[11]

In addition, the Commission finds that AEP-Ohio should use annual compounding to calculate its deferred fuel balance on a going-forward basis, which, as Staff notes, is consistent with our recognition of an annual interest rate in the Company's rate of return allowance. The Commission further finds that AEP-Ohio should file annual updates to provide detailed information regarding the status of the deferrals during the recovery period, in accordance with Staff's recommendation.

The Commission declines to adopt the recommendation of Staff and intervenors to adjust for ADIT, as this issue was already considered and addressed in the ESP 1 Order in which the Commission found that the carrying charges on the deferrals should be calculated without an adjustment for ADIT in order to ensure that AEP-Ohio recovers its actual fuel expenses, as required by Section 4928.144, Revised Code.[12] In the ESP 1 Order, the Commission authorized the deferral of incurred costs equal to the amount not collected, plus carrying charges, and did not require an adjustment for tax effects. Intervenors and Staff have not persuaded the Commission that our approach in the ESP 1 Order was inconsistent with prior Commission precedent or sound regulatory practice.

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11 *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 523 (2011); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 343 (2007); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 399 (2006).

12 ESP 1 Order at 23-24.

> Additionally, for the reasons set forth in the ESP 1 Remand Order,[13] the Commission declines to adjust the deferral balance to account for the flow through effects of the Ohio Supreme Court's remand of the ESP 1 Order or the rejected ESP 2 Stipulation. As addressed in the ESP 1 Remand Order, the adjustments proposed by OCC and IEU-Ohio would be tantamount to unlawful retroactive ratemaking. The Commission notes, however, that the deferral balance is subject to adjustment as a result of the annual FAC audit proceedings, including those adjustments required by the recent FAC Order, which is consistent with the ESP 1 Order.[14]
>
> In its application, AEP-Ohio projected that only OP would have a deferral balance as of the end of 2011. However, AEP-Ohio's reply comments indicate that both CSP and OP have deferral balances to be recovered through the PIRR. AEP-Ohio should, therefore, file, in final form, new tariffs for the CSP and OP rate zones, subject to Commission review. Such tariffs should reflect any adjustments to the deferral balance that are required as a result of the Commission's orders in AEP-Ohio's annual audit proceedings for 2009.
>
> The Commission will address whether the PIRR rates should be blended in its opinion and order to be issued in 11-346. AEP-Ohio is directed to implement the PIRR and commence recovery of the associated regulatory asset, beginning concurrently with the new ESP rates that will take effect after the issuance of the Commission's forthcoming opinion and order in 11-346.

It is, therefore,

ORDERED, That the motions to intervene filed by various parties be granted. It is, further,

ORDERED, That the motions for admission *pro hac vice* filed on behalf of Emma F. Hand and Dan Barnowski be granted. It is, further,

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13 ESP 1 Remand Order at 34-36.

14 ESP 1 Order at 15.

ORDERED, That AEP-Ohio's application be approved as modified herein. It is, further,

ORDERED, That AEP-Ohio file unblended PIRR rates for the CSP and OP rate zones, subject to Commission review, to take effect with the new ESP rates approved in 11-346. It is, further,

ORDERED, That AEP-Ohio file, in final form, four complete copies of its tariffs. One copy shall be filed with these case dockets, one shall be filed with AEP-Ohio's TRF dockets, and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. AEP-Ohio shall also update its tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

ORDERED, That AEP-Ohio shall notify its customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date. A copy of this notice shall be submitted to the Commission's Service Monitoring and Enforcement Department prior to its distribution to customers. It is, further,

ORDERED, That nothing in this finding and order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this finding and order be served upon 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

SJP/sc

Entered in the Journal
AUG 01 2012

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FIFTH ENTRY ON REHEARING

The Commission finds:

(1) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company)[1] are public utilities and electric light companies within the definitions of Sections 4905.02 and 4905.03, Revised Code, and, as such, are subject to the jurisdiction of this Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

(2) On March 18, 2009, in Case No. 08-917-EL-SSO, *et al.* (08-917), the Commission issued its opinion and order regarding the application for an electric security plan (ESP) for CSP and OP (ESP 1 Order). Entries on rehearing were issued on July 23, 2009 (First ESP 1 Entry on Rehearing) and November 4, 2009. In the ESP 1 Order, the Commission directed AEP-Ohio, pursuant to Section 4928.144, Revised Code, to phase-in a portion of the rate increase authorized over an established percentage for each year of the ESP, in order to mitigate the impact of the rate increase for customers.[2] The Commission authorized AEP-Ohio to establish a regulatory asset to record and defer fuel expenses with carrying costs, at the weighted average cost of capital (WACC),

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1 By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP. *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.

2 ESP 1 Order at 22-23.

with recovery through a nonbypassable surcharge to commence in 2012 and continue through 2018.[3] The ESP 1 Order was appealed to the Ohio Supreme Court and subsequently remanded to the Commission for further proceedings.

(3) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer pursuant to Section 4928.141, Revised Code.[4] The application sought approval of a second ESP in accordance with Section 4928.143, Revised Code, to begin on January 1, 2012.

(4) On September 1, 2011, in the above-captioned cases, AEP-Ohio filed an application for approval of a mechanism to recover its deferred fuel costs, as directed by the Commission in the ESP 1 Order. Specifically, AEP-Ohio requested approval of the creation of a recovery mechanism, in the form of a nonbypassable phase-in recovery rider (PIRR), to ensure recovery of its accumulated deferred fuel costs, including carrying costs, as approved by the Commission in the ESP 1 Order. AEP-Ohio proposed that the PIRR take effect with the first billing cycle of January 2012.

(5) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),[5] including the above-captioned cases. The ESP 2 Stipulation included

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3 ESP 1 Order at 20-23; First ESP 1 Entry on Rehearing at 6-10.

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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, 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 Approval of Certain Accounting Authority*, Case No. 11-349-EL-AAM and 11-350-EL-AAM.

5 *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; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

provisions regarding the establishment and terms of AEP-Ohio's PIRR, as well as the securitization of the PIRR regulatory assets.

(6) Pursuant to an entry issued on September 16, 2011, the consolidated cases were consolidated for the purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedule in the pending cases, including the present proceedings, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(7) On October 3, 2011, the Commission issued an order on remand (ESP 1 Remand Order), addressing the Ohio Supreme Court's remand of the ESP 1 Order.

(8) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation. The Commission did not modify the PIRR provisions of the ESP 2 Stipulation.

(9) On February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part. Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation, on grounds unrelated to the PIRR provisions. The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its first ESP.

(10) By entry issued on March 14, 2012, the attorney examiner found that, in light of the Commission's rejection of the ESP 2 Stipulation, the present cases should move forward, and a comment period should be established in order to assist the Commission in its review of AEP-Ohio's application. Pursuant to the entry, initial and reply comments were due to be filed by April 2, 2012, and April 17, 2012, respectively.

(11) In accordance with the procedural schedule established in these cases, timely initial comments were filed by IEU-Ohio, OCC,

OEG, Ormet, and Staff on April 2, 2012. Staff filed revised comments on April 3, 2012. Timely reply comments were filed by AEP-Ohio, OCC, and Ormet on April 17, 2012.

(12) By finding and order issued on August 1, 2012, the Commission approved AEP-Ohio's application for a mechanism to recover its deferred fuel costs to the extent set forth in the finding and order and authorized the Company to establish the PIRR (PIRR Order).

(13) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(14) On August 31, 2012, applications for rehearing of the PIRR Order were filed by AEP-Ohio, OCC, and IEU-Ohio.

(15) On September 10, 2012, memoranda contra AEP-Ohio's application for rehearing were filed by OCC and IEU-Ohio. On that same date, AEP-Ohio filed a memorandum contra OCC's and IEU-Ohio's applications for rehearing.

(16) By entry on rehearing issued on September 26, 2012, the Commission granted the applications for rehearing to allow further consideration of the matters specified in the applications.

(17) The Commission has reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission and should be denied.

Flow-Through Effects of Remand

(18) In its first ground for rehearing, OCC argues that the Commission unreasonably and unlawfully failed to reduce AEP-Ohio's fuel deferral balance to account for the flow-through effects of the Ohio Supreme Court's remand of the ESP 1 Order and the rejected ESP 2 Stipulation. OCC contends that the PIRR is a mechanism that permits the Commission to make future rate adjustments in order to fully remedy the provider of last resort

charges that were the subject of the remand. OCC asserts that, in relying on the Court's prohibition against retroactive ratemaking, the Commission has misunderstood the Court's precedent and failed to recognize that retroactive ratemaking does not occur if a mechanism in the rates allows for prospective rate adjustments.

IEU-Ohio, in its third ground for rehearing, also contends that the Commission's failure to reduce the deferral balance to account for the flow-through effects of the remand of the ESP 1 Order is unlawful and unreasonable.

(19) AEP-Ohio responds that the Commission appropriately declined to account for the flow-through effects of the remand of the ESP 1 Order because it would violate the prohibition against retroactive ratemaking, as explained by the Commission in the ESP 1 Remand Order. AEP-Ohio also contends that this issue is not a proper subject for consideration in the present proceedings, which pertain only to a recovery mechanism for the deferral that was already authorized by the Commission in the ESP 1 Order. Additionally, AEP-Ohio points out that IEU-Ohio admits that it has appealed the Commission's decision in the ESP 1 Remand Order regarding the flow-through effects of the remand. AEP-Ohio concludes that IEU-Ohio should not be permitted to raise the argument again here, given that the matter has been previously determined by the Commission and is now under review by the Ohio Supreme Court.

(20) The Commission finds that OCC and IEU-Ohio have raised no new arguments regarding the purported flow-through effects of the Court's remand of the ESP 1 Order. We again decline to order the adjustment to the deferral balance that OCC and IEU-Ohio request. As we stated in the ESP 1 Remand Order, consistent with the Court's precedent prohibiting retroactive ratemaking and refunds, we cannot order a prospective adjustment to account for past rates that have already been collected from customers and subsequently found to be unjustified. Accordingly, we find that OCC's and IEU-Ohio's requests for rehearing on this issue should be denied.

Collection of Rates Subject to Refund

(21) In its second ground for rehearing, OCC asserts that the Commission violated Section 4903.09, Revised Code, because it failed to explain why the PIRR rates should not be collected subject to refund, as OCC recommended. OCC contends that the Commission is required to comply with the statute so that the Ohio Supreme Court is able to review the Commission's reasoning in an order on appeal.

(22) AEP-Ohio points out, as a general matter, that an evidentiary hearing was not required under the circumstances, given that the factual matters were already adjudicated in 08-917. Although the Commission solicited comments from the parties, AEP-Ohio argues that Section 4903.09, Revised Code, does not require the Commission to make findings on the recommendations made by the parties in their comments. AEP-Ohio adds that a Commission order generally takes effect upon issuance, and, therefore, there is no expectation that the order should be implemented subject to refund unless clearly indicated by the Commission in the order. According to AEP-Ohio, Commission orders are presumed lawful until such time as they are set aside by the Ohio Supreme Court, and there is thus no need for the Commission to issue an order subject to refund or to entertain such requests from OCC.

(23) The Commission finds that the PIRR Order clearly stated the basis for our determinations in response to the comments filed by the parties. OCC's request that the PIRR rates be subject to refund is unnecessary under the circumstances. As we explained in the PIRR Order, the deferral balance is subject to adjustment as a result of the annual fuel adjustment clause (FAC) audit proceedings. In fact, the Commission ordered adjustments with respect to the annual audit of AEP-Ohio's FAC mechanism for 2009.[6] Additionally, we note that OCC's request is contrary to past precedent.[7] Therefore, the Commission finds

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6 *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC, *et al.*, Opinion and Order (January 23, 2012).

7 *See, e.g., In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of an Additional Generation Service Rate Increase Pursuant to Their Post-Market Development Period Rate Stabilization Plans*, Case No. 07-63-EL-UNC, Entry on Rehearing (November 28, 2007); *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with the*

that the PIRR Order does not violate Section 4903.09, Revised Code, and that OCC's second assignment of error lacks merit and should be denied.

Accumulated Deferred Income Taxes (ADIT)

(24) OCC's third ground for rehearing is that, in declining to reduce the deferral to account for ADIT, the Commission authorized AEP-Ohio to collect unreasonable carrying charges from customers in violation of Sections 4905.22 and 4928.02(A), Revised Code. OCC contends that the Commission has departed from sound ratemaking theory and Commission precedent without adequate explanation. Similarly, in its first ground for rehearing, IEU-Ohio argues that the PIRR Order is unlawful and unreasonable because the Commission failed to require AEP-Ohio to adjust for ADIT in calculating the carrying charges on the deferral balance, which violated generally accepted accounting principles, state policy, and sound regulatory principles and precedent.

(25) AEP-Ohio responds that the Commission reasonably and lawfully upheld a prior adjudicated finding from the ESP 1 Order by declining to order an adjustment for ADIT. AEP-Ohio contends that this matter is the subject of a final, non-appealable order that is not open to reconsideration at this point. AEP-Ohio asserts that the doctrines of res judicata and collateral estoppel bar attempts by OCC and IEU-Ohio to relitigate the issue. AEP-Ohio urges the Commission to clarify that final adjudicated factual matters are not subject to reconsideration. AEP-Ohio argues that a practice of reconsideration and modification of prior factual determinations by the Commission would eviscerate the concept of finality.

(26) The Commission thoroughly considered the arguments raised by the parties in their comments and declined to order an adjustment for ADIT. As explained in the PIRR Order, the parties failed to persuade the Commission that our approach in the ESP 1 Order with respect to this issue was inconsistent with

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Request to Implement a Billing Cost Recovery Rider, Case No. 05-792-EL-ATA, Opinion and Order (March 1, 2006); *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with a Request to Implement a PJM Administrative Fee*, Case No. 05-844-EL-ATA, Finding and Order (January 25, 2006).

prior Commission precedent or sound regulatory practice. We also noted that, in the ESP 1 Order, the Commission found that the carrying charges on the deferral should be calculated without an adjustment for ADIT in order to ensure that AEP-Ohio recovers its actual fuel expenses, as required by Section 4928.144, Revised Code. We again affirm this finding, as it is consistent with the statute's requirement that, if the Commission orders a phase-in of rates, it must also authorize the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. The statute makes no mention of adjustments to account for tax effects. Given our finding that we have authorized a phase-in plan that is consistent with the directives of the statute, we find no merit in the arguments that the Commission has violated state policy or sound regulatory practice or precedent.

Additionally, with respect to generally accepted accounting principles (GAAP), Section 4928.144, Revised Code, provides that, if the Commission orders a phase-in, the order must provide for the creation of regulatory assets pursuant to GAAP. Although IEU-Ohio alleges that the PIRR Order does not comply with this statutory provision, IEU-Ohio does not explain how the creation of the regulatory asset associated with AEP-Ohio's deferred fuel expenses, which was actually authorized by the Commission in the ESP 1 Order, was contrary to GAAP. In fact, IEU-Ohio argues that AEP-Ohio must account for ADIT on its books as a regulatory liability and makes no claim that the Company's creation of the regulatory asset was in some way improper. In any event, the Commission believes that the question of whether ADIT should be reflected in the calculation of carrying charges to be included in the PIRR is a matter separate and apart from how AEP-Ohio maintains its books pursuant to GAAP. Therefore, we find that OCC's and IEU-Ohio's assignments of error on the issue of ADIT should be denied.

CSP's Deferral Balance

(27) In its fourth ground for rehearing, OCC maintains that the Commission erred in authorizing AEP-Ohio to collect PIRR rates from CSP's customers. OCC notes that the Commission stated that AEP-Ohio's reply comments indicate that both OP and CSP

have deferral balances to be recovered through the PIRR. According to OCC, however, AEP-Ohio's reply comments do not refer to a deferral balance for CSP's customers. OCC points out that AEP-Ohio's application projected an over-recovery for CSP. As a related issue, in its fifth ground for rehearing, OCC contends that the Commission violated Section 4903.09, Revised Code, because it did not explain why it failed to order AEP-Ohio to refund to CSP's customers the amount of the over-recovery, plus accrued interest calculated at the same interest rate that the Company used to calculate carrying charges on its deferred fuel costs.

(28) In its memorandum contra, AEP-Ohio explains that, on page five of its reply comments, the Company clearly stated that there is a deferral balance for CSP's customers. AEP-Ohio asserts that OCC's arguments are, therefore, without merit.

(29) AEP-Ohio plainly indicated that CSP does in fact have a deferral balance to be collected from customers at page five of the Company's reply comments. As the factual premise underlying OCC's arguments is wrong, the Commission finds that OCC's fourth and fifth assignments of error lack merit and should be denied.

Due Process

(30) In its second ground for rehearing, IEU-Ohio asserts that the PIRR Order is unlawful and unreasonable because the Commission arbitrarily and capriciously authorized AEP-Ohio to increase rates without affording due process to intervenors. Specifically, IEU-Ohio contends that it was denied the opportunity to develop its arguments through testimony and exhibits and to subject AEP-Ohio's positions to cross-examination. IEU-Ohio adds that the Commission failed to hold a hearing, even though the intervenors contested the fact that carrying charges have not been adjusted to account for ADIT. IEU-Ohio also notes that it offered testimony in 11-346 regarding ADIT but that the Commission elected to strike the testimony and instead instructed IEU-Ohio to present its arguments in the current proceedings. IEU-Ohio asserts that it was nevertheless denied a meaningful opportunity to demonstrate that the calculation of carrying charges should account for ADIT.

(31) AEP-Ohio replies that there is no statutory right to a hearing, given that recovery of the deferred fuel expenses was authorized by the Commission in the ESP 1 Order, as required by Section 4928.144, Revised Code. AEP-Ohio argues that these proceedings do not involve a rate increase and are intended only to formalize the Company's collection of a charge that was established in the ESP 1 Order and delayed for the public good. AEP-Ohio contends that IEU-Ohio improperly claims that the charge is the matter at issue, when it was actually established in the ESP 1 Order, consistent with the requirements of Section 4928.144, Revised Code. AEP-Ohio notes that IEU-Ohio was afforded ample due process in 08-917 and, in fact, raised many of the same arguments in those proceedings. AEP-Ohio requests that the Commission deny IEU-Ohio's attempt to use the present cases as another chance to reiterate its prior arguments.

(32) The Commission finds that IEU-Ohio was fully afforded the opportunity to develop its arguments through testimony and exhibits and to subject AEP-Ohio's positions to cross-examination during the evidentiary hearing held in 08-917. As we noted in the PIRR Order, AEP-Ohio's recovery of the regulatory asset by means of a nonbypassable surcharge was approved in the ESP 1 Order, as required by Section 4928.144, Revised Code. Accordingly, AEP-Ohio's application in the present proceedings is an application not for an increase in rates. Therefore, no hearing is required, and no due process violation has occurred. IEU-Ohio's second assignment of error should be denied.

Modification of Phase-In Plan

(33) In its first ground for rehearing, AEP-Ohio maintains that the PIRR Order is unreasonable and unlawful because it modified previously adjudicated matters, contrary to the doctrine of res judicata. Specifically, AEP-Ohio argues that, in the PIRR Order, the Commission unreasonably and unlawfully modified its prior determinations in the ESP 1 Order and directed that the Company's carrying charges should be calculated based on its long-term cost of debt rate during the recovery period and that annual compounding should be used to calculate the deferral balance. AEP-Ohio contends that, pursuant to Ohio Supreme Court precedent, the Commission has only limited authority to

modify prior orders and that the Commission may not reverse an adjudicatory determination made in a prior final order that was undisturbed on appeal. AEP-Ohio notes that, once an appeal is filed, jurisdiction over the case passes from the Commission to the Court and, absent a remand, the Commission never regains jurisdiction over the issues determined in the case.

AEP-Ohio asserts that the Commission has misinterpreted Court precedent and that there is no general rule allowing the Commission to reverse prior orders as long as it justifies the reversal. According to AEP-Ohio, the Commission's determination in the ESP 1 Order that the carrying charges on the deferral would be calculated using a WACC rate is an adjudicated finding that cannot be changed after the fact, as opposed to a general position that the Commission may revisit under circumstances of prior error. Further, AEP-Ohio believes the Commission lost jurisdiction over the issue of the proper carrying cost rate after it was finally adjudicated at the conclusion of the appeal of the ESP 1 Order. Finally, AEP-Ohio argues that the Commission's modification of the carrying cost rate ignores the impact of applying a debt rate to the regulatory asset and fails to recognize that the Company's deferred fuel costs were already funded with a combination of debt and equity. AEP-Ohio adds that its capital structure should be adjusted to reduce the amount of long-term debt by a corresponding amount of the regulatory asset in order to avoid double counting the use of long-term debt as a funding source.

AEP-Ohio further contends that the Commission's directive to calculate the deferral using annual, rather than monthly, compounding financially harms the Company without justification. AEP-Ohio notes that all of its other riders with carrying costs are calculated on a monthly basis, which more accurately reflects the Company's carrying costs on a contemporaneous basis.

AEP-Ohio also asserts, as part of its first assignment of error, that the PIRR Order is unlawful and unreasonable in that the Commission retroactively modified the terms of the Company's expired ESP, which denied the Company its statutory right to withdraw from the ESP, pursuant to Section 4928.143(C)(2), Revised Code. According to AEP-Ohio, the Commission's

retroactive modifications have a significant financial impact on the Company of approximately $129 million, which would have justified the Company's withdrawal from the ESP at its outset. Because the ESP has now expired and AEP-Ohio cannot withdraw from it, the Company contends that the Commission is estopped by Section 4928.143(C)(2), Revised Code, from unilaterally changing its prior findings in the ESP 1 Order.

(34) OCC responds that the cases presently before the Commission are separate and distinct proceedings conducted for the purpose of approving AEP-Ohio's mechanism to recover its deferred fuel costs. OCC emphasizes that the ESP 1 Order only authorized the creation of the fuel deferral and not a recovery mechanism. In any event, OCC notes that the Commission must justify a change to a lawful order and that the Commission offered a reasoned explanation for its decision that a long-term debt rate is more appropriate for calculating carrying charges during the collection period. Additionally, OCC contends that AEP-Ohio failed to explain the supposed financial harm that would result from annual compounding. OCC also argues that the PIRR Order has no bearing on AEP-Ohio's statutory right to withdraw from an ESP, as these proceedings have the separate and distinct purpose of addressing the recovery mechanism. OCC concludes that the Commission is not estopped from directing AEP-Ohio to implement an appropriate recovery mechanism.

(35) IEU-Ohio contends that the doctrine of res judicata does not apply because the ESP 1 Order did not address the carrying charge rate to be applied by the Company during the amortization period or the amount of the deferral balance that would be eligible for recovery. Like OCC, IEU-Ohio argues that the present proceedings involve separate issues from those addressed in the ESP 1 Order. IEU-Ohio notes that AEP-Ohio was required to file an application for approval of a recovery mechanism to commence amortization of the deferral balance. IEU-Ohio adds that the Ohio Supreme Court has previously determined that the Commission may modify the phase-in of rates authorized in the ESP 1 Order. IEU-Ohio avers that the Commission has broad discretion regarding the terms of a phase-in of rates, pursuant to Section 4928.144, Revised Code.

Regarding AEP-Ohio's right to withdraw from its ESP, IEU-Ohio notes that the Company cites no supporting precedent and that the Company's argument is meritless, as the Commission did not modify the ESP 1 Order. IEU-Ohio points out that the ESP 1 Order contemplated that AEP-Ohio would seek approval of a recovery mechanism at the end of the ESP term and that the Commission's approval, therefore, could not have occurred at a time when the Company's right to withdraw from the ESP still existed. IEU-Ohio adds that AEP-Ohio has not actually claimed that it would have exercised its right to withdraw from the ESP based on the Commission's directive that carrying charges accrue at a long-term debt rate. Finally, IEU-Ohio urges the Commission to reject AEP-Ohio's argument that its actual capital structure should be adjusted in light of the fact that the carrying charges during the recovery period will be calculated based on the long-term debt rate. IEU-Ohio argues that AEP-Ohio's request is inconsistent with past Commission practice, as the Commission does not allow adjustments to a utility's capital structure to reflect item-by-item treatment of regulatory assets. IEU-Ohio also notes that any equity infusion from AEP-Ohio's parent company is reflected in its actual capital structure.

(36) The Commission finds no merit in AEP-Ohio's argument that our modification of the ESP 1 Order was unreasonable or unlawful. For the reasons enumerated in the PIRR Order, the Commission finds that it is appropriate for AEP-Ohio to calculate its carrying charges during the recovery period using a long-term cost of debt rate, as well as to use annual compounding to calculate its deferral balance on a going-forward basis. The Commission explained that it would be unreasonable for AEP-Ohio to apply the WACC rate to the deferral balance after collection begins, given that the risk of non-collection at that point is significantly reduced and in light of the ongoing economic difficulties that continue to impact ratepayers. We further noted that use of the long-term debt rate during the period in which the deferred fuel expenses are collected is in accordance with sound regulatory practice and established Commission precedent.[8] With respect to Staff's

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[8] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company's Transmission Cost Recovery Rider*, Case No. 08-1202-EL-UNC, Finding and Order (December 17, 2008); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for*

recommendation that AEP-Ohio should use annual compounding to calculate its deferral balance, the Commission explained that Staff's recommended approach is in keeping with our recognition of an annual interest rate in the Company's rate of return allowance. The Commission, therefore, justified its modifications to AEP-Ohio's phase-in plan.

We do not agree with AEP-Ohio's assertions that the Commission has misinterpreted Ohio Supreme Court precedent. As we stated in the PIRR Order, the Court has continually recognized the Commission's authority to revisit earlier orders as long as the Commission justifies its modifications.[9] As discussed above, the Commission explained the reasoning for its adjustments to AEP-Ohio's phase-in plan. Additionally, as IEU-Ohio points out, the Court recently addressed a similar question in a decision that emphasized the Commission's considerable discretion to determine the details of a phase-in of rates pursuant to Section 4928.144, Revised Code. The Court found no error in the Commission's modification of AEP-Ohio's phase-in plan to exempt the Company's economic development cost recovery rider from the ESP's rate caps. The Court specifically stated that, as a general rule, the Commission has discretion to revisit earlier regulatory decisions and modify them prospectively.[10] We also agree with IEU-Ohio that there is no reason to adjust AEP-Ohio's actual capital structure, as the Company contends, in response to the modification of its phase-in plan. The Commission has consistently rejected the use of a hypothetical capital structure in cost of capital determinations.[11]

We also find no merit in AEP-Ohio's argument that the Company was deprived of its right to withdraw from its ESP,

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Authority to Modify Their Accounting Procedure for Certain Storm-Related Services Restoration Costs, Case No. 08-1301-EL-AAM, Finding and Order (December 19, 2008); *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 1, 2012).

9 *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 523 (2011); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 343 (2007); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 399 (2006).

10 *In re Columbus Southern Power Co.*, 129 Ohio St. 3d 568, 569 (2011).

11 *See, e.g., In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Increase Its Rates for Electric Service to All Jurisdictional Customers*, Case No. 81-1256-EL-AIR, Opinion and Order (December 22, 1982).

pursuant to Section 4928.143(C)(2), Revised Code. AEP-Ohio offers no support for its theory that the Commission is estopped from modifying a phase-in plan that continues past the expiration of the ESP. As noted in the PIRR Order, AEP-Ohio's phase-in plan is subject to the ongoing supervision and jurisdiction of the Commission. Additionally, Section 4928.143(C)(2), Revised Code, specifically pertains to the Commission's approval and modification of an application for an ESP. The present proceedings concern AEP-Ohio's application for approval of a mechanism to recover its deferred fuel costs. As these cases do not involve approval of an ESP, Section 4928.143(C)(2), Revised Code, has no bearing on the outcome. Accordingly, AEP-Ohio's first assignment of error should be denied.

Securitization

(37) In its second ground for rehearing, AEP-Ohio argues that the PIRR Order is unreasonable and unlawful to the extent that it undermines the securitization efforts that the Commission encourages pursuant to Sections 4928.23 through 4928.2318, Revised Code. Citing Section 4928.23(J), Revised Code, AEP-Ohio asserts that a basic prerequisite for securitization of a regulatory asset is that it be the subject of a final, non-appealable order. AEP-Ohio contends that no regulatory asset will ever be considered final and eligible for securitization, if the Commission is able to modify the terms of its approval of the asset, three years later, and subsequent to an appeal to the Court.

(38) In its memorandum contra, OCC asserts that the present proceedings are the proper point of reference for determining whether the appeals process has been exhausted and thus whether phase-in costs may be securitized. OCC believes that AEP-Ohio's phase-in costs will be eligible for securitization only after any appeals of the present cases have been resolved. OCC concludes, therefore, that the PIRR Order does not undermine AEP-Ohio's securitization efforts. IEU-Ohio agrees, noting that there are several ongoing proceedings that must be decided by the Commission and the Ohio Supreme Court before the securitization process may move forward.

(39) The Commission recognizes that the General Assembly has provided electric utilities with new authority to securitize regulatory assets to reduce long-term borrowing costs to be recovered from ratepayers, as provided in Sections 4928.23 through 4928.2318, Revised Code. In the PIRR Order, the Commission encouraged AEP-Ohio to pursue securitization of the regulatory asset associated with its deferred fuel expenses as expeditiously as possible. We do not agree with AEP-Ohio that the Commission's modifications to the Company's phase-in plan for the recovery period will undermine the Company's securitization efforts in any respect. AEP-Ohio offers no support for its claim that the PIRR Order will impede or delay its ability to pursue and achieve securitization. We find, therefore, that AEP-Ohio's second assignment of error lacks merit and should be denied.

It is, therefore,

ORDERED, That the applications for rehearing filed by AEP-Ohio, OCC, and IEU-Ohio be denied. It is, further,

ORDERED, That a copy of this fifth entry on rehearing be served upon 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

SJP/sc

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Barcy F. McNeal
Secretary