FILE

48

RECEIVED-DOCKETING DIV
2009 APR 17 PM 2:57
PUCO

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for the Approval of its Electric Security Plan; and Amendment to Its Corporate Separation Plan; and the Sale or Transfer of Certain Generation Assets	)	**Case No. 08-917-EL-SSO**
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	)	**Case No. 08-918-EL-SSO**

COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S APPLICATION FOR REHEARING

Marvin I. Resnik, Counsel of Record
Steven T. Nourse
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1606
Fax: (614) 716-2950
Email: miresnik@aep.com
stnourse@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 South High Street
Columbus, Ohio 42315
Telephone: (614) 227-2270
Fax: (614) 227-2100
dconway@porterwright.com

Counsel for Columbus Southern Power Company and the Ohio Power Company

Filed: April 17, 2009

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician TM Date Processed 4/17/2009

TABLE OF CONTENTS

INTRODUCTION.....1

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING.....4

I. The Commission's Expansion of the Statutory Test Under §4928.143 (C)(1), Ohio Rev. Code, for Comparing the Electric Security Plan to the Results That Would Otherwise Apply Under a Market Rate Offer Is Unlawful and Unreasonable.....4

II. The Commission's Rejection of the Companies' Proposed Line Extension Provisions Is Unlawful and Unreasonable.....6

III. The Commission's Rejection of the Companies' Proposal to Commence in 2011 Recovery of Regulatory Assets Authorized in Previous Commission Proceedings is Unlawful and Unreasonable.....9

IV. The Commission's Modification of the Companies' Proposed Phase-In Unreasonably Adjusts the Balance Between the Up-Front Revenue Recovery and Subsequent Recovery of Deferrals. Further, the Commission Failed to Clarify That Additional Revenues Authorized From a Distribution Base Rate Case or From the Energy Efficiency and Peak Demand Reduction Recovery Rider Are Not Included in the Phase-In/Deferral Structure.....12

V. The Commission's Rejection of the Companies' Proposed Automatic Annual Increases to the Non-FAC Portion of the Generation Rates is Unlawful and Unreasonable.....14

VI. It was Unreasonable and Against the Manifest Weight of the Evidence for the Commission to Conclude That the Load of the Former MonPower Service Territory Should not be Excluded From the Companies' Baseline Used for Compliance With §§4928.64 and 4928.66, Ohio Rev. Code.....17

VII. It was Unreasonable and Unlawful for the Commission to Set Aside §4928.66, Ohio Rev. Code, and Determine That the Companies' Interruptible Load Should Not be Counted in the Companies' Determination of its EE/PDR Compliance "unless and until the load is actually interrupted." (Order, p. 46).....20

VIII. It was Unreasonable and Against the Manifest Weight of the Evidence for the Commission to Defer a Decision on Retail Participation in the PJM Demand Response Programs.....23

IX. It was Unreasonable and Unlawful for the Commission to Set Aside §4928.143(B) (2) (h), Ohio Rev. Code, and Determine That the Companies' Distribution Proposals Must be Examined Through a Distribution Rate Case Where All Components of Distribution Rates are Subject to Review and the Order's Modification in this Regard Should be Clarified.....27

X. The Order is Unlawful and Unreasonable to the Extent That it Intended to Allow Only Half of the Required Funding When Approving the gridSMART Rider and the Order's Modification in this Regard Should be Clarified.....35

XI. The Commission's Authorization for the Fuel Adjustment Clause for Only Three Years is Unreasonably Restrictive.....37

XII. The Commission's Modification of the Companies' Proposed Fuel Adjustment Clause Baseline in the Pre-Electric Security Plan Standard Service Offer Rates is Unreasonable.....38

XIII. In Deferring Judgment on a Methodology for the Significantly Excessive Earnings Test (SEET) and Directing Its Staff to Convene a Workshop for Developing a Methodology to be Applied to All Electric Utilities, the Commission Unreasonably Failed to Note the Appropriateness of the Companies' Proposal for Having the SEET Applied to Them on a Combined Basis and That How That Would be Done Would be Considered in the Workshop and That a Common Methodology Does Not Require a Methodology Identical for Each Electric Utility.....40

CONCLUSION.....42

CERTIFICATE OF SERVICE.....43

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for the Approval of its Electric Security Plan; and Amendment to Its Corporate Separation Plan; and the Sale or Transfer of Certain Generation Assets	)))))	**Case No. 08-917-EL-SSO**
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	))))	**Case No. 08-918-EL-SSO**

COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
APPLICATION FOR REHEARING

INTRODUCTION

In accordance with §4903.10, Ohio Rev. Code, and §4901-1-35, Ohio Admin. Code, Columbus Southern Power Company and Ohio Power Company ("AEP Ohio" or "the Companies") apply for rehearing because the following aspects of the Commission's March 18, 2009 Opinion and Order ("Order") are unreasonable and/or unlawful:

I. The Commission's Expansion of the Statutory Test Under §4928.143 (C)(1), Ohio Rev. Code, for Comparing the Electric Security Plan to the Results That Would Otherwise Apply Under a Market Rate Offer Is Unlawful and Unreasonable.

II. The Commission's Rejection of the Companies' Proposed Line Extension Provisions Is Unlawful and Unreasonable.

III. The Commission's Rejection of the Companies' Proposal to Commence in 2011 Recovery of Regulatory Assets Authorized in Previous Commission Proceedings is Unlawful and Unreasonable.

IV. The Commission's Modification of the Companies' Proposed Phase-In Unreasonably Adjusts the Balance Between the Up-Front Revenue Recovery and Subsequent Recovery of Deferrals. Further, the Commission Failed to Clarify That Additional Revenues Authorized From a Distribution Base Rate Case or From the

Energy Efficiency and Peak Demand Reduction Recovery Rider Are Not Included in the Phase-In/Deferral Structure.

V. The Commission's Rejection of the Companies' Proposed Automatic Annual Increases to the Non-FAC Portion of the Generation Rates is Unlawful and Unreasonable.

VI. It was Unreasonable and Against the Manifest Weight of the Evidence for the Commission to Conclude That the Load of the Former MonPower Service Territory Should not be Excluded From the Companies' Baseline Used for Compliance With §§4928.64 and 4928.66, Ohio Rev. Code.

VII. It was Unreasonable and Unlawful for the Commission to Set Aside §4928.66, Ohio Rev. Code, and Determine That the Companies' Interruptible Load Should Not be Counted in the Companies' Determination of its EE/PDR Compliance "unless and until the load is actually interrupted." (Order, p. 46).

VIII. It was Unreasonable and Against the Manifest Weight of the Evidence for the Commission to Defer a Decision on Retail Participation in the PJM Demand Response Programs.

IX. It was Unreasonable and Unlawful for the Commission to Set Aside §4928.143(B)(2)(h), Ohio Rev. Code, and Determine That the Companies' Distribution Proposals Must be Examined Through a Distribution Rate Case Where All Components of Distribution Rates are Subject to Review and the Order's Modification in this Regard Should be Clarified.

X. The Order is Unlawful and Unreasonable to the Extent That it Intended to Allow Only Half of the Required Funding When Approving the gridSMART Rider and the Order's Modification in this Regard Should be Clarified.

XI. The Commission's Authorization for the Fuel Adjustment Clause for Only Three Years is Unreasonably Restrictive.

XII. The Commission's Modification of the Companies' Proposed Fuel Adjustment Clause Baseline in the Pre-Electric Security Plan Standard Service Offer Rates is Unreasonable.

XIII. In Deferring Judgment on a Methodology for the Significantly Excessive Earnings Test (SEET) and Directing Its Staff to Convene a Workshop for Developing a Methodology to be Applied to All Electric Utilities, the Commission Unreasonably Failed to Note the Appropriateness of the Companies' Proposal for Having the SEET Applied to Them on a Combined Basis and That How That Would be Done Would be Considered in the Workshop and That a Common Methodology Does Not Require a Methodology Identical for Each Electric Utility.

In presenting these grounds for rehearing in detail below, AEP Ohio respectfully requests that the Commission clarify on rehearing certain modifications contained within the Order (either as a direct request for clarification or as an alternative to granting rehearing) to enable the Companies to make an informed decision on whether to accept or withdraw the Commission-modified plan. The Commission has previously held that an application for rehearing is the appropriate place to "seek further understanding of the intent and effect of a commission order."[1] The importance of those clarifications are elevated in cases such as this where under § 4928.143(C)(2), Ohio Rev. Code, the utility must make a decision whether to withdraw its ESP application in light of the modifications made by the Commission to the filed plan. It is under this elevated statutory process that AEP Ohio seeks clarification on certain issues to ensure a full understanding of all of the terms of the Commission's order and the effect those changes have on AEP Ohio's ESP. Any clarification on these points that does not occur until months or years from now would diminish or undermine AEP Ohio's statutory right to withdraw from a modified plan.

[1] *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of Tariffs to Recover, Through an Automatic Adjustment Clause, Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment,* Case No. 07-478-GA-UNC (Entry on Rehearing, ¶13) (September 12, 2007), citing *In the Matter of the Review of Chapters 4901-1,4901-3, and 4901-9 of the Ohio Administrative Code,* Case No. 06-685-AU-ORD (Finding and Order, ¶ 59) (December 6, 2006).

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

I. The Commission's Expansion of the Statutory Test Under §4928.143 (C)(1), Ohio Rev. Code, for Comparing the Electric Security Plan to the Results That Would Otherwise Apply Under a Market Rate Offer Is Unlawful and Unreasonable.

The statutory test for approval of an ESP is set out in §4928.143 (C) (1), Ohio Rev. Code. That test requires that the Commission approve the ESP "if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under [an MRO]."

The Commission also has the authority to modify and approve an ESP application if the ESP, as modified, meets this statutory test. This authority, however, does not mean that the Commission can modify an ESP application which meets the statutory test even absent the Commission's preferred modification. Stated differently, if the proposed ESP is not more favorable in the aggregate than the expected results of the MRO, *then* the Commission can modify the proposed ESP and approve it. If, however, an ESP in the aggregate is more favorable than the expected results of an MRO the Commission lacks the authority to modify that ESP to make it even more favorable than the expected results of an MRO.

Nonetheless, this is what the Order does. The Commission justifies its modification of the Companies' ESP on its conclusion that its authority to make those modifications to an ESP that, as proposed, already passes the statutory test, is not limited "to an after-the-fact determination of whether the proposed ESP is more favorable in the aggregate. Rather, the Commission finds that our statutory authority includes the

authority to make modifications supported by the evidence in the record in this case." (Order, p. 72).

By this rationale, the Commission concludes that its typical rate making authority to set just and reasonable rates presents a basis of authority that goes beyond the authority the General Assembly vested in the Commission in §4928.143 (C) (1), Ohio Rev. Code. With that extra layer of authority, the Commission examined individual components of the Companies' proposed ESP to determine whether to reject or modify those components. Using such a process, the Commission rejected or modified certain provisions of the ESP, for instance, the Companies' proposal for automatic annual increases to their non-FAC portion of generation rates.

SB 221, of course, did not implement a "typical rate making" process. Instead, it permits the Companies to propose an ESP that can include, without limitation, many different components. Those components are not to be judged on a component-by-component basis. The analysis is not to determine if each component is reasonable, cost based, prudent or on its own more favorable than a related component within a possible MRO. Instead, the components of the ESP are to be analyzed "in the aggregate" and the aggregate impact is to be compared to the expected results that otherwise would apply under an MRO.

On rehearing, the Commission should modify its Order to reflect the statutory test established by the General Assembly. Based on the record as discussed throughout the Companies' post-hearing briefs, and particularly the portions of those briefs concerning the ESP v. MRO comparison, the Commission should approve the ESP as proposed by the Companies.

II. The Commission's Rejection of the Companies' Proposed Line Extension Provisions Is Unlawful and Unreasonable.

The Companies' ESP proposal sought to continue the up-front payment concept established in Case No. 01-2708-EL-COI,[2] at an increased level. The Commission rejected this proposal, finding that the policy of requiring up-front payments had not been shown by the Companies to be consistent with SB 221 or to advance the policy of the state. The Commission went on to state that in light of the statutory mandate that the Commission adopt statewide line extension rules, it was unwilling to adopt a unique policy for the Companies at this time.[3] Consequently, the Companies were directed "to account for all line extension expenditures, excluding premium services, in plant in service until the new line extension rules become effective...." Recovery of the amounts placed in the plant-in-service accounts "will be reviewed in the context of a distribution rate case." (Order, p.49).

On rehearing the Commission should authorize the Companies to implement the up-front payments contemplated by the Commission in its November 5, 2008 Finding and Order in Case No. 06-653-EL-ORD. In that order, the Commission adopted Rule 4901:1-9-07 (D). That rule would permit up-front recovery of: non-premium line extension costs that exceed five thousand dollars for single family homes, (D) (1); non-premium line extension costs that exceed twenty-five hundred dollars per unit for

---

[2] *In the Matter of the Commission's Investigation into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company and Monongahela Power Company Regarding the Installation of New Line Extensions*, Case No. 01-2708-EL-COI, et al., Opinion and Order (November 7, 2002).

[3] See *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order (November 5, 2008), Entry on Rehearing (December 17, 2008).

residential, non-master-metered multifamily installations, (D) (2); and forty percent of the total cost of the line extension, excluding premium service incremental costs, for non-residential installations, (D) (3).

While several rehearing applications were filed in Case No. 06-653-EL-ORD, no party sought rehearing on the basis that the up-front payment amounts adopted in Rule 4901:1-9-07 (D) were too high.[4] Therefore, it appears that once the Commission issues its Entry on Rehearing in that docket and the review process before the Joint Committee on Agency Rule Review is completed, the up-front payment amounts adopted in the Commission's November 5, 2008 Finding and Order will become effective.

If no modification regarding up-front line extension payments is authorized through this rehearing, the Commission's order in the Companies' ESP proceeding will result in the Companies, and the customers and developers with whom they work on line extension matters, bouncing from the pre-ESP up-front payment provisions to no up-front payments, except in very limited circumstances, and then to re-implementation of new up-front payment amounts under the Commission's adopted rule. Moreover, during the interim period when non-residential developers would make no contribution to the line extension non-premium service costs there would be no incentive for those developers to consider cost implications associated with the siting of their development.

The Companies contend that because no party in the rulemaking case has challenged the adopted up-front payments as being too high it would be more efficient, less confusing and better regulatory policy to permit the Companies to implement the adopted up-front payments as part of their ESP, subject to reimbursement to

[4] The Application for Rehearing filed on behalf of the FirstEnergy utilities argued that there should be some up-front payment obligation in the single family home context in addition to the payment when costs exceed five thousand dollars.

customers/developers who make those payments if, for some reason, the Commission did reduce the payment amounts in the rules that ultimately become effective.

Permitting the Companies to implement the up-front payments adopted by the Commission would be consistent with Chapter 4928, Ohio Rev. Code, as well as, state policy. As the Commission recognized in its November 7, 2002 Opinion and Order in Case No. 01-2708-EL-COI, both §§4928.15 (A) and 4928.35 (C), Ohio Rev. Code:

> provided the Commission with the authority to approve the establishment of new line extension policies and procedures. Pursuant to those sections, the Commission can establish how the cost of new facilities are to be recovered from customers requesting service to be provided from line extensions as well as those customers requesting that line extensions be built. (p. 30).[5]

Finally, the Commission has held in Case No. 06-653-EL-ORD that non-residential customers should be required to contribute, up-front, forty percent of the total cost of a requested line extension, plus the incremental costs of premium services. The Commission's decision to require up-front payment of forty percent of non-premium costs was based on the policy arguments made by the Industrial Energy Users-Ohio that requiring "the electric utilities to fund one hundred percent of the upfront cost of non-premium line extension costs will have a negative impact on existing businesses, creating intra-class subsidies." (Finding and Order, pp. 4, 5).

For these reasons, the Companies ask the Commission to modify on rehearing the line extension portion of its Order, so that the Companies can implement the up-front payment provisions of Rule 4901:1-9-07 (D) subject to reimbursement as described above. Such modification would be consistent with §§4928.15 (A) and 4928.35 (C),

[5] Both of those sections provide that "a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the Commission." This language remains unchanged by SB 221.

Ohio Rev. Code, would be consistent with the policy decisions made by the Commission in Case No. 06-653-EL-ORD, and would be consistent with reasonable and efficient regulatory practices.

III. The Commission's Rejection of the Companies' Proposal to Commence in 2011 Recovery of Regulatory Assets Authorized in Previous Commission Proceedings is Unlawful and Unreasonable.

The Companies' ESP contained a provision that would permit the recovery of regulatory assets, the creation of which previously had been authorized by the Commission. As set out on page 58 of the Companies' Initial Post-Hearing Brief, there are five different categories of these regulatory assets:

1. Consumer education, customer choice implementation and transition plan filing costs plus carrying charges in accordance with the Commission's September 28, 2000 order in Case Nos. 99-1729 and 99-1730-EL-ETP.

2. Rate case expense plus carrying charges in accordance with the Commission's January 26, 2005 order in the Companies' Rate Stabilization Plan Filing in Case No. 04-169-EL-UNC.

3. Carrying charges on distribution line extension charges in accordance with the Commission's November 7, 2002 order in Case No. 01-2708-EL-COI, et al.

4. Monongahela Power Company transfer integration costs plus carrying charges and acquired net regulatory assets in accordance with the Commission's November 9, 2005 order in Case No. 05-765-EL-UNC.

5. The Companies' voluntary Ohio Green Power Pricing Program costs in accordance with the Commission's March 23, 2007 order in Case No. 06-1153-EL-UNC.

The Companies proposed to begin the amortization of the December 31, 2010 regulatory asset balance in 2011. This proposed delay until 2011 would minimize the impact on customers during the three-year ESP period. The Companies identified the

regulatory asset balances as of June 30, 2008 and the projected balances as of December 31, 2010. (Companies' Ex. 6, p. 36). No party challenged the actual or projected balances.

The Commission rejected the Companies' proposal, stating that the Companies had not demonstrated that recovery of these regulatory assets, as a single-issue rate making item for distribution infrastructure and modernization incentives, meets the requirements of SB 221 or state policy. The Commission's reasoning is misdirected. The Companies were not relying on §4928.143 (B) (2) (h), Ohio Rev. Code, the provision explicitly permitting ESP provisions regarding the utility's distribution service. Even if the Companies had relied on that provision, such a proposal would not be limited to distribution infrastructure and modernization incentives. This is because even this provision refers to distribution service "including, *without limitation*" infrastructure and modernization incentives. (emphasis added).

The Companies' historic regulatory assets recovery proposal is clearly permissible under §4928.143 (B) (2), Ohio Rev. Code, which states that an ESP "may provide for or include, *without limitation*, any of the following:" (emphasis added). Therefore, even if the regulatory asset recovery proposal were not permissible under subdivision (B) (2) (h), (which because of the subdivision's own "without limitation" language the proposal is permissible), the proposal is permitted under the broader "without limitation" language which precedes the listing of possible ESP provisions.

The Commission's conclusion that the regulatory asset recovery proposal did not comply with state policy also is in error. Each of these regulatory assets is consistent with state policy. Consumer education, customer choice implementation, and transition

plan filing costs all were incurred in furtherance of the state's policy favoring customer choice. Rate case expenses associated with Rate Stabilization Plan proceedings all were incurred in furtherance of the state's policy favoring such plans over a flash-cut to market rates. Line extension regulatory assets all are consistent with §§4928.15 (A) and 4928.35 (C), Ohio Rev. Code, as applied by the Commission to address cost recovery of line extension facilities. The regulatory assets related to integrating the former Monongahela Power Company service territory into CSP's service territory was strongly encouraged by the Commission and are consistent with state policy. Lastly, the regulatory assets related to the Ohio Green Power Pricing Program are consistent with state policy set out in SB 221 to encourage the use of renewable energy resources.

These regulatory assets are plainly consistent with state policy. The Commission authorized the creation of these regulatory assets. Therefore, on rehearing the Commission should authorize the Companies to begin amortizing these regulatory assets in 2011 as proposed in the Companies' ESP. At a minimum, even if such amortization is not authorized the Commission should accept the June 30, 2008 balances of these regulatory assets as the starting point for additions to these balances. All parties had a full opportunity to challenge the June 30, 2008 balances and the Commission should not permit a chance to re-litigate these balances.

IV. The Commission's Modification of the Companies' Proposed Phase-In Unreasonably Adjusts the Balance Between the Up-Front Revenue Recovery and Subsequent Recovery of Deferrals. Further, the Commission Failed to Clarify That Additional Revenues Authorized From a Distribution Base Rate Case or From the Energy Efficiency and Peak Demand Reduction Recovery Rider Are Not Included in the Phase-In/Deferral Structure.

As part of their filed ESP, the Companies proposed to phase-in the impacts of the ESP, including the implementation of the FAC. The Companies proposed to defer incremental FAC expenses so that for each year of the ESP the rate increase would be limited to approximately fifteen percent. Recovery of charges through the Transmission Cost Recovery Rider (TCRR) and charges associated with new government mandates were to stand alone and not be included in the proposed limitation.

In its Order, the Commission adopted the Companies' phase-in proposal conceptually, but relying on its interpretation of §4928.144, Ohio Rev. Code, it modified the phase-in structure that the Companies had proposed. The Commission substantially adjusted the balance between the charges that would be collected during the ESP and the amount of the FAC deferrals that will accumulate during the ESP period. As the Commission characterized its approach, it was balancing its objectives of limiting current charges with wanting to minimize the deferrals and carrying charges. (Order, p. 23).

The Companies recognize the authority placed in the Commission by the enactment of §4928.144, Ohio Rev. Code.[6] Nonetheless, the Companies believe that the Commission's adjustment to the balance between these competing interests was too severe. Keeping in mind that some intervenors expressed their preference for no phase-in because of the deferrals which are a legacy of a phase-in (See OCEA Initial Brief, pp. 87-

[6] The Companies believe this authority must be exercised in the total context of Chapter 4928, Ohio Rev. Code, particularly in the context of the standard for approval of an ESP without modification.

89), the Commission should rebalance the authorized increases and the size of the deferrals. The Companies believe that the percentages and associated resulting overall average generation rates set out on page 22 of the Order should be adjusted to reflect at least an annual 10 percent increase throughout the ESP period.

Even if the Commission does not modify the phase-in it authorized, it still must clarify the intended scope of the increase limitations it has imposed. Because the Commission has put off to a distribution rate case many of the distribution rate increases the Companies proposed as part of their ESP, and has substantially reduced the extent of the overall revenue increase that had been sought by the Companies, the Commission should clarify on rehearing that its phase-in/deferral structure does not include revenue increases associated with a distribution base rate case or the revenues associated with the Energy Efficiency and Peak Demand Reduction Cost Recovery (EE/PDR) Rider.[7] This "empty" rider has been initially set at zero cost recovery.

This clarification is needed in order for the Companies and the intervenors to fully understand the import of the Commission's Order. From the Companies' perspective, it seems obvious that the Commission did not intend to include revenue increases from a distribution base rate case or the EE/PDR rider in the overall limitation imposed in the phase-in. A contrary position would result in the untenable view that a distribution base rate case would have no effect other than further increasing the overall phase-in related deferrals and carrying charges. The same is true for the costs the Companies will incur related to the EE/PDR rider. Therefore, on rehearing the Commission should clarify that

[7] As noted elsewhere in this Application for Rehearing the Companies seek rehearing of the Commission's deferral of issues to a distribution rate case and the reduction in revenue increase sought by the Companies. By asking for this point of clarification the Companies are not abandoning their arguments concerning those other issues.

revenues from these sources do not count as part of phase-in limitation imposed by the Commission.

If the Commission intended to include revenue increases from distribution base rate cases or from the EE/PDR rider in the phase-in limitation then the Companies request that the Commission modify that position on rehearing. Such a position would unreasonably result in nothing more than increased deferrals and carrying charges. Further, it would preclude the Companies from recovering the distribution-related revenues to which they are entitled. Such a preclusion would have the effect of limiting distribution revenue recovery because of generation-related Standard Service Offer rates, thereby violating the policy guidelines set forth in §4928.02 (H), Ohio Rev. Code. Therefore, the Commission should rule on rehearing that revenue increases resulting from a distribution base rate case or from the EE/PDR rider will not count toward the phase-in limits set by the Commission.

V. The Commission's Rejection of the Companies' Proposed Automatic Annual Increases to the Non-FAC Portion of the Generation Rates is Unlawful and Unreasonable.

As part of their ESP, the Companies proposed to increase their non-FAC generation rates annually by 3 percent (for CSP) and by 7 percent (for OP). These automatic increases were intended to recover costs during the ESP period associated with environmental investments made during that period, as well as cost increases in providing generation service and unanticipated non-mandated generation-related cost increases. The Commission's Staff recognized the value of this aspect of the ESP, but presented a different approach. The Staff suggested that the annual automatic increases should be

reduced to 1.5 percent (for CSP) and 3.5 percent (for OP). In addition, Staff recommended recovery of a carrying charge on environmental investment made in each year of the ESP. The Staff's method for carrying charge recovery was through annual filings after the investments have been made.

In its Order, the Commission denied the Companies any automatic annual increases, but did adopt the Staff's proposal regarding recovery of carrying charges on new environmental investments. The Commission's denial of any automatic annual increases was based on its balancing "the economic conditions.... against the Companies' provision of electric service under an ESP." (Order, p. 30).

On rehearing, the Commission should modify this ruling and adopt the annual automatic increases. SB 221 specifically provides for such increases during the term of an ESP.[8] In addition, the Commission's consideration of "economic conditions" as a reason for denying this aspect of the Companies' proposed ESP incorrectly suggests that the current economic conditions are not adversely affecting the Companies and their ability to operate and maintain their generation facilities. The ESP concept which sets the Standard Service Offer for a period of time – in this case three years – must have a sufficient degree of flexibility built into it in recognition of the Companies' limited opportunities to respond to generation cost increases. That flexibility must be broader in scope than addressing only new environmental investments. The Companies recognize that the Commission has to some extent addressed part of the Companies' support for their proposed automatic percentage increases to the non-FAC portion of generation rates. Therefore, the Companies ask that on rehearing the Commission authorize the

[8] §4928.143 (B) (2) (e), Ohio Rev. Code.

automatic annual 3 and 7 percent increases, offset by whatever revenue increase is granted in relation to the recovery of carrying costs related to new environmental investment.

There is an issue also regarding the authority the Commission granted for the Companies to recover carrying costs related to environmental investments made during the ESP period. The Staff's approach, which apparently the Commission adopted, would have the Companies request recovery of the carrying cost *after* the investments have been made.

This requirement to wait until after the investments have been made may not present a problem for 2009 and 2010 investments.[9] The investments made in 2011, however, will require a request to be made late in 2011 or early in 2012. In either case, since this ESP period ends at the end of 2011 it is not clear that the Companies will be able to recover the carrying costs associated with 2011 new environmental investment.

To avoid this procedural problem, the Commission on rehearing should permit the Companies to recover carrying costs based on projected new environmental investment in each year. This would enable the Companies to recover on a current basis the carrying costs based on such projections. In 2010 the Companies can true-up their 2009 carrying cost recovery to what it would have been if actual environmental investments had been known in advance. The recovery for 2010 can be trued-up in 2011 and the recovery for 2011 can be trued-up in 2012 with a one-time credit or surcharge. Because this process will result in more timely and accurate recovery of carrying costs associated with

[9] There will, however, be a delay in commencement of the carrying cost recovery since the Companies' filing will be made after the investment is made and some time for regulatory processing will be needed.

generation-related environmental investments it should be adopted by the Commission on rehearing.

VI. It is Unreasonable and Against the Manifest Weight of the Evidence for the Commission to Conclude That the Load of the Former MonPower Service Territory Should Not be Excluded From the Companies' Baseline Used for Compliance With §§4928.64 and 4928.66, Ohio Rev. Code.

The Order concludes that the load of the former MonPower service territory should not be excluded from the Companies' baselines for calculating benchmark compliance under §§4928.64 and 4928.66, Ohio Rev. Code. (Order, p. 43). The Commission's reasoning was twofold: (1) the MonPower load was not a load that CSP served and would have lost, but for some action by CSP, and (2) not all economic development should automatically result in an exclusion from the baseline. (*Id.*) Both of these reasons are erroneous and the Commission should modify its findings on rehearing to allow exclusion from the Companies' baselines of the load from the former MonPower service territory.

The approach of adjusting the baseline for economic development load growth is consistent with §4928.64(B), Ohio Rev. Code, for alternative energy resources and §4928.66(A) (2) (a), Ohio Rev. Code, with respect to energy efficiency and peak demand reduction programs. The Order erred by not addressing the Companies' demonstration that the record in Case No. 05-765-EL-UNC reflects the Commission's concerns for MonPower's customers if they were not served under an RSP. Staff witness Scheck acknowledged that MonPower customers were facing electricity prices directly based on wholesale market prices that far exceeded the level of retail prices being offered by

MonPower. (Tr. VIII, pp. 201-202). This prospect of a dramatic rate increase was viewed as a major threat to the economic health and development of the area.

As quoted in Mr. Baker's testimony in this case, Staff witness Cahaan had testified in Case No. 05-765-EL-UNC that there were important "economic development" issues involved in that docket. (Companies' Ex. 2A, p. 48). The Staff in its post-hearing brief in that case also stated that if CSP did not absorb MonPower's service territory, prices would leap to a level that "almost certainly will drive out major employers from a region which already has very few. This is a crushing blow to a region which has weathered many, too many, in recent years." (*Id.* at 49). Ultimately, the Commission concluded in Case No. 05-765-EL-UNC that with the service territory transfer "economic benefits will inure to all citizens and businesses in both regions by helping to sustain *economic development* in southeastern Ohio." (Case No. 05-765-EL-UNC, Opinion and Order at 11, emphasis added). It is unfair for the Commission to now conclude in the current case that acquisition of the load in the former MonPower service territory is not economic development in the true sense.

Separate and apart from the state of facts as reflected in the record in Case No. 05-765, it is not reasonable for the Commission to presently take a narrow technical view of economic development and reject exclusion of the MonPower load because it was "not a load that CSP served and would have lost, but for some action by CSP." As the Commission is aware, economic development rates are typically offered to attract or retain load and to create/retain jobs and promote favorable economic conditions for businesses in the State of Ohio. Thus, although the load may not have been subject to being entirely "lost" to the State of Ohio or even to CSP, the former MonPower

customers would have effectively gone to market (at that time yielding much higher prices) and would have been lost as SSO-regulated load. As was recognized at the time of facing that threat, the entire issue was a significant challenge that would have otherwise yielded a substantial adverse impact on economic development within the former MonPower territory.

The underlying policy for permitting exclusions from the baselines should be to remove the disincentive to the utility for encouraging economic development that would otherwise manifest in higher benchmark mandates for development of alternative energy, efficiency and demand response. This policy applies equally to the situation where economic development load is taken over by a "white knight" electric utility such as the situation with MonPower as it does to the situation where the load is retained by the same electric utility. The Commission's conclusion that not all economic development load should be excluded is arbitrary and contrary to and undermines the policy and intent of §§4928.64 and 4928.66, Ohio Rev. Code.

The Commission also erred by not addressing the Companies' alternative position that if the Commission were to somehow determine that CSP's acquisition of the load of the former MonPower service territory was not economic development, EE/PDR baselines can also be adjusted to ensure that the compliance measurement is not unduly influenced by other factors beyond the utility's control. *See* Companies' Initial Brief at 103 (discussing §4928.66(A) (2) (c), Ohio Rev. Code). Thus, the Commission on rehearing could alternatively adopt the Companies' proposed baseline adjustments based on the fact that CSP's acquisition of the MonPower-related load was beyond its control

and that situation should not unduly influence compliance with the benchmarks. Either way, the Commission should modify its conclusion on rehearing.

VII. It is Unreasonable and Unlawful for the Commission to Set Aside §4928.66, Ohio Rev. Code, and Determine That the Companies' Interruptible Load Should Not be Counted in the Companies' Determination of its EE/PDR Compliance "unless and until the load is actually interrupted." (Order, p. 46).

The Commission agreed with the Staff that interruptible load should not be counted in the Companies' determination of EE/PDR compliance requirements unless and until the load is actually interrupted. (Order, p. 46). The ability to interrupt is a significant demand reduction resource of the Companies. Not counting interruptible capacity could significantly increase the cost to the Companies (and their customers) of achieving compliance with the statutory mandates for peak demand reduction. Further, because interruption of service has a real impact on customer operations, the Companies do not wish to be required to unnecessarily interrupt service if there is no system or market need to do so. (Companies' Ex. 1, p. 5). The Order would require AEP Ohio to unnecessarily interrupt industrial customers at a time when fragile economic conditions exist and would directly curtail the economic output of those customers at a time when it is needed most. In addition, a customer's right to buy through and keep business operations running (to the extent they are fortunate enough to have the need to do so) would be adversely affected by the approach taken in the Order. The Order is unlawful and unreasonable in this regard because it fails to address or distinguish AEP Ohio's detailed statutory arguments.

A plain reading of the law supports the Companies' position. In contrast to the requirement in §4928.66(A)(1)(a), Ohio Rev. Code, for an EDU to implement programs that "achieve" specified levels of energy savings, §4928.66(A)(1)(b), Ohio Rev. Code, requires an EDU to implement programs "designed to achieve" specified peak demand reductions. The General Assembly used two distinct and different phrases to convey that a distinct and different standard applies for peak demand reductions than for energy efficiency achievements. Requiring that peak demand programs be "designed to achieve" the stated benchmarks is quite different than requiring that energy efficiency programs "achieve energy savings" at the stated benchmarks.

When asked during his cross examination to describe the difference between programs that achieve energy efficiency and programs designed to achieve peak demand reductions, Staff witness Scheck stated as follows: "Well, one would presume that achieved means you actually did it. Designed means you designed something to do it, but maybe you didn't [do it]." (Tr. VIII, p. 208). Mr. Scheck's plain interpretation of the language is appropriate and straightforward. Yet, his recommendation against counting interruptible capabilities does not seem to recognize or incorporate this critical difference. Because this posture was adopted by the Commission, the Order suffers from the same flaw.

The General Assembly's deliberate and unequivocal distinction between the requirement to "achieve" versus being "designed to achieve" recognizes important differences between the nature of energy efficiency programs and the nature of peak demand reduction programs. Energy efficiency programs are ongoing efforts that produce energy savings during any given period of time; unused energy savings capabilities do

not achieve energy reductions during the time period being measured and the opportunity to do so is lost after the time period elapses. The policy or social underpinnings for energy efficiency – such as depletion of fossil fuel resources or reducing environmental impacts associated with fossil fuel – are not directly advanced when measured energy reductions do not occur over a particular period of time.

By contrast, peak demand reduction programs create a capability to reduce peak demand that can either be exercised or reserved for future use as needed; unused peak reduction capabilities are still "designed to achieve" the same level of peak reduction and remain available for future use when needed. If a peak demand reduction resource or capability is not needed for operational reasons or because weather is mild and a critical peak will not be reached or there is surplus energy in the market, that peak demand reduction capability is fully reserved for future use without depletion or diminishing its value as a resource. The policy and social underpinnings for peak demand reduction – avoiding the need to build additional power plants to meet increasing load – continue to be fulfilled even where the peak demand resources are not immediately needed and those resources are held without diminution for future use. These logical and policy distinctions dovetail neatly with the "achieve" versus "designed to achieve" language used by the General Assembly.

Excluding interruptible load for purposes of long-term resource planning is reasonable and appropriate. The Commission's decision also fails to acknowledge or address the argument made by AEP Ohio that in the context of integrated resource planning, interruptible capability can count as capacity and avoid the need to plan for and deploy new power plants. (Tr. VIII, pp. 209-210). Similarly, in the Commission's just-

adopted IRP rules, native load is defined as internal load minus interruptible load. See Rule 4901:5-5-01(R) (Case No. 08-888-EL-ORD April 15, 2009 Opinion and Order). It follows that a utility's interruptible capability should be counted toward compliance with the peak demand reduction mandates.

The Commission's rejection of this position will cause unnecessary interruptions and will unnecessarily increase AEP Ohio's cost of compliance with the peak demand reduction mandates. This one-two punch will increase customers' bills and needlessly interrupt industrial customers' output during a fragile economy. Because the Commission's Order also contravenes the controlling statute, the Commission should reconsider and declare that interruptible capability is appropriately "designed to achieve" peak demand reductions when needed and counts toward compliance under §4928.66, Ohio Rev. Code.

VIII. It is Unreasonable and Against the Manifest Weight of the Record for the Commission to Defer a Decision on Retail Participation in the PJM demand Response Programs.

AEP Ohio respectfully disagrees with the Order's conclusion that the Commission does not have sufficient information to decide the issue of retail participation in PJM demand response programs, given the exhaustive treatment of these issues by the parties in merit briefing (both in the context of the 1/1/09 briefs and the full merits briefs), in motions and memorandum in support and in opposition, multiple sets of written testimony and substantial cross examination during the hearing. The thorough litigation of this issue is evidenced by the Order's substantial recitation of the arguments and issues relating to AEP Ohio's proposal to restrict retail participation in the wholesale PJM

demand response programs. (Order, pp. 53-58). The merits of AEP Ohio's position (as well as that of all the parties) have been fully developed during briefing and motions in this case and will not be revisited again in this application for rehearing.

If resolution of the issue did not have urgency, then deferring it into an unspecified docket with an undetermined schedule for resolution might not cause a problem, other than the inefficiency associated with the parties repeating the activities of this case. With respect to this issue, however, the maxim that "justice delayed is justice denied" applies with full force. Not only will the current registrants be able to participate through the middle of 2010 under the status quo (halfway through the ESP term), but additional customers now even have the opportunity to register. That is because the FERC recently re-opened registration for participation in the demand response programs for the 2009-2010 PJM planning year until May 1, 2009 and parties that have not already registered may be able to successfully register. *PJM Interconnection*, 126 FERC ¶61,275 (March 26, 2009 Order), ¶ 89. But the fact that the registration process is reopened also appears to present an opportunity for the Commission to resolve this issue without any negative repercussions on prospective registrants. That is because the extended registration deadline re-opens the entire registration process and, just as new parties can be added through registration, current registrants can be eliminated or withdrawn without prejudice through a timely decision from the Commission to restrict retail participation.

AEP Ohio urges the Commission to reconsider its decision to defer this issue. AEP Ohio's proposed ESP, including the proposed restriction on retail participation in the wholesale demand response programs, was timely submitted in July of 2008 and deserves to be resolved one way or another. Rather than deferring a decision and

defaulting to full participation in the PJM wholesale programs for the 2009/2010 planning year (*i.e.*, through the entire first half of the ESP term), the Commission should default to no participation if it is going to defer its ultimate decision on this issue. The Indiana Commission recently granted a request by AEP to continue the Commission's default prohibition against retail participation in the PJM demand response programs while it further considers a more permanent resolution to the issue (otherwise only entertaining individual customer requests to participate on case-by-case basis). *In the Matter of the Commission's Investigation Into Any And All Matters Related to Commission Approval of Participation By Indiana End-Use Customers in Demand Response Programs Offered by the Midwest ISO and PJM Interconnection,* Cause No. 43566 (February 25, 2009 Order).[10] Using such an approach would better preserve SB 221's statutory plan for utilization of in-state demand resources and enable AEP Ohio's own retail demand response programs to be refined to meet the aggressive mandates for peak demand reductions.

Delaying a decision on the issue will inject substantial uncertainty into AEP Ohio's plan for compliance with the peak demand reduction mandates of SB 221 and will impose unnecessary additional costs on AEP Ohio's ratepayers in two related but distinct ways: (1) it will cause AEP Ohio's compliance costs to increase significantly due to the exportation of Ohio's demand response resources through retail participation in the PJM programs that currently benefit the East Coast, and (2) it will cause additional long-term capacity costs on other non-participating customers due to AEP Ohio's obligation to continue providing firm service even though the participating customers are using their

[10] The IURC Order can be found on the Internet at the following address: https://myweb.in.gov/IURC/eds/Modules/Ecms/Cases/Docketed_Cases/ViewDocument.aspx?DocID=0900b63180103f41

load in a manner that is akin to interruptible service. As Companies' witness Roush testified, AEP Ohio would like to emulate the PJM demand response programs at the retail level, to the extent possible. (Companies' Ex. 1, p. 7; Companies' Initial Brief, p. 117).

Indeed, if the Commission were to adopt the retail restriction on rehearing and prevent the exportation of Ohio's valuable demand resources, it could order the Companies to modify their demand response programs to emulate, to the maximum extent possible, the customer benefits achieved under the PJM demand response programs. Indeed, this outcome seems to line up squarely with the letter and spirit of the concurring opinion filed in this case by Chairman Schriber and Commissioner Centolella. The concurring opinion states that it is essential that consumers benefit from demand response in terms of a reduction in the capacity for which AEP Ohio customers are responsible and it encourages AEP Ohio to work with stakeholders to ensure that predictable consumer demand response is recognized as a reduction in capacity that it must carry under PJM market rules. When these goals are coupled with AEP Ohio's existing obligation for achieving compliance under SB 221's aggressive peak demand reduction mandates, the best solution for the Companies and their customers is to develop better retail programs and make them available to customers (to the exclusion of the wholesale programs). The Commission should modify its decision in this regard on rehearing.

IX. It is Unreasonable and Unlawful for the Commission to Set Aside §4928.143(B) (2) (h), Ohio Rev. Code, and Determine That the Companies' Distribution Proposals Must be Examined Through a Distribution Rate Case Where All Components of Distribution Rates are Subject to Review and the Order's Modification in this Regard Should be Clarified.

Although the Companies are providing adequate and reliable electric service, they understand that customers' service reliability expectations are increasing and therefore proposed an Enhanced Service Reliability Plan (ESRP) in order to maintain and enhance reliability. While the components of the ESRP are adjustable as circumstances warrant, the components together represent a detailed set of plans and programs designed to target the most effective use of limited resources. Under the proposed ESRP, AEP Ohio merely sought incremental funding to support an incremental level of reliability activities designed to maintain and enhance service reliability levels.

In the Order, the Commission recognized that SB 221 permits single issue ratemaking for distribution infrastructure and modernization initiatives but proceeded to find that the legislative "intent could not have been to provide a 'blank check' to electric utilities." Order at 32. The Order went on to set aside the statute and instead conclude that "the *only way* to examine the full distribution system, the reliability of such system, and the customer's expectations, as well as whether the programs proposed by AEP Ohio are 'enhanced' initiatives (truly incremental), is through a distribution rate case where all components of distribution rates are subject to review." Order at 32 (emphasis added).

The Commission's conclusion that a distribution rate case is "the only way" to evaluate AEP Ohio's ESRP unavoidably conflicts with the express provision within SB 221 permitting single-issue ratemaking proposals for distribution infrastructure and

modernization initiatives within ESP proposals and outside the context of a full examination of the distribution system: §4928.143(B)(2)(h), Ohio Rev. Code. As a related matter, while the Commission properly concluded that the proposed vegetation management program is incremental in nature and is sufficiently tied to reliability impacts and aligned with customer expectations so as to warrant adoption, the Order erred in failing to reach similar conclusions based on the record for the remaining ESRP programs. In short, the Order's key conclusion regarding the ESRP contravenes the governing statute and the Commission otherwise failed to acknowledge the manifest weight of the record regarding the ESRP programs other than vegetation management.

As a legal matter, imposing a requirement to conduct a distribution rate case prior to cost recovery has the effect of bypassing the General Assembly's provision for single-issue rate making in the context of an ESP. The General Assembly knew that electric utilities had not all conducted recent distribution base rate cases when it passed S.B. 221. The General Assembly knew when it allowed single-issue rate making that a clear and comprehensive view of a utility's finances or distribution system would not be conducted as it otherwise would be in the context of a base rate case. Since all of these limitations are inherently present when engaging in single-issue ratemaking, pointing out these same limits cannot form an appropriate basis for rejecting a distribution proposal in the context of an ESP. Section 4928.143(B)(2)(h), Ohio Rev. Code, was enacted as a key part of the legislative package contained within SB 221 to enable an EDU to propose a long-term energy delivery infrastructure modernization plan such as the ESRP and to encourage electric utilities to file ESPs instead of MROs. There can be no question that single-issue ratemaking is permitted *within an ESP case* and pursuant to the statutory deadlines

imposed by the General Assembly for an ESP case. The Companies are only seeking recovery of transparent incremental costs for incremental reliability activities – something that is clearly permitted under §4928.143(B) (2) (h), Ohio Rev. Code.

On a qualitative basis, AEP Ohio's ESRP proposal cannot accurately be considered a "blank check." Each of the programs was described in detail by Companies' witness Boyd and the Company agreed to be accountable for incremental spending to fund the programs, if cost recovery was approved. (Companies' Ex. 11, p. 37, Chart 10; Tr. V, pp. 253-254). The total incremental cost of the ESRP was estimated to be $282.6 million in capital and $163 million in O&M over the three-year term of the ESP. (*Id.*) Each program had specific cost projections that were explained in great detail in testimony, in written discovery and during cross examination. Further, AEP Ohio indicated its acceptance of a rider for the ESRP (instead of a flat percentage increase designed to collect the projected cost as was originally proposed) and clearly stated its understanding that only prudently incurred costs would be recovered through the rider and agreed that it would be accountable for the funds transparently collected through rates reconciled with the incremental amounts spent. (AEP Ohio Reply Brief at 62-63). Regarding an assurance for reliability impacts of the ESRP, Companies' witness Boyd also indicated that the Companies are willing to work with Staff to determine target reliability benefits based on implementation of the ESRP. (Tr. V, pp. 252-253).

Another indication that the Companies were not simply asking for a "blank check" is evidenced by their proposals for Alternative Feed Service (AFS) and Net Energy Metering Service (NEMS).[11] The AFS proposal was designed for customers who

[11] AEP Ohio is not seeking rehearing on the Order's AFS and NEMS rulings but is merely using those aspects of the proposed ESP as an example in this context.

desire a higher level of reliability and wish to subscribe to a premium service to meet their particular needs. Similarly, the NEMS proposal (including a specific NEMS-H version specifically designed for hospitals) was developed in order to cooperatively help customers with generation capabilities manage their energy costs. In making the AFS and NEMS proposals, the Companies sought to provide bilateral benefits to customers and enhance reliability – not to unilaterally cash in on a blank check. In short, as a well-developed and detailed proposal that required substantial accountability and dollar-for-dollar reconciliation with prudently incurred expenditures, AEP Ohio's ESRP is the opposite of a "blank check" and that characterization was an erroneous basis for rejecting the balance of the ESRP.

The Commission should have evaluated each of the ESRP programs based on the record and issued specific findings about each program based on the same criteria used to evaluate the vegetation initiative (incremental reliability impacts and alignment with customer expectations). The Order rendered a meaningful evaluation only for the vegetation management initiative and merely glossed over the non-vegetation ESRP programs. The Commission should have reached specific findings with respect to each of the ESRP programs – not just the vegetation management program that it was approving. If it had performed a broader evaluation of the ESRP, the manifest weight of the record would have compelled similar findings for AEP Ohio's other ESRP programs.

For example, the Commission cited Companies' witness Boyd's testimony as record support for concluding that increased spending earmarked for specific vegetation management initiatives can reduce tree-caused outages, resulting in better reliability. Order at 33. But the same testimony also supports making such findings for the other

ESRP programs. Besides vegetation management, the ESRP also included the following strategically designed components:

- Enhanced overhead line inspection approach, targeting specific asset modernization/replacements and reliability enhancements;
- Targeted distribution automation; and
- Targeted underground residential distribution cable replacement and rejuvenation.

(Companies' Ex. 11, p. 17). The ESRP programs were designed to work in concert to effectively address the leading outage causes (both momentary and sustained) to significantly enhance the overall "customer experience." The manifest weight of the record demonstrated that each of the ESRP programs – not just the vegetation management initiative – would contribute substantial reliability impacts if implemented.

In particular, Companies' witness Boyd, through his testimony, specifically established that positive reliability impacts are expected if the ESRP programs are undertaken and he presented a solid enhanced reliability plan for the Commission to consider as part of the entire ESP package.[12] (*See e.g.* Companies' Ex. 11, pp. 24, 25, Chart 4 and p. 30, Chart 6). Other record evidence also supports the positive reliability impacts expected for the ESRP. (*See e.g.*, Tr. V, pp. 228; Staff Ex. 2, p. 11 citing the response to Staff data request 4-2(b); OCC Ex. 9A, Response to Staff Data Request 3-83). Further, during cross examination, OCC's own witness (Mr. Cleaver) testified that he expected the ESRP programs would positively affect the Companies' reliability. (Tr. VII, pp. 63-64).

[12] Of course, events beyond the Companies' control could have an adverse impact on reliability index performance even though the ESRP would have otherwise resulted in positive reliability impacts.

One of the primary reasons for the Companies proposing to enhance service reliability levels is that customers are more sensitive to power quality issues today. As demonstrated by AEP Ohio in its testimony, this has come about due to the proliferation of electronically-controlled devices heavily relied upon by customers within the home and workplace and, as a related but distinct matter, the pervasive presence of digital technology. (Companies' Ex. 11, pp. 10-11). The Companies' survey results show, for the first half of 2008, that one in every four residential respondents (24%) and one in every three commercial respondents (33%) believed their future reliability expectations would increase over the next five years. (*Id.* at 13). Again, this data is consistent with the trends of more electronically-controlled and digital devices and increasing sensitivity to momentary interruptions. In order to meet these challenges and ensure that the reliability of its distribution system is aligned with customers' expectations, AEP Ohio is proposing to pursue its ESRP. Although the Commission recognized this impact associated with the vegetation management initiative, the other ESRP programs were also designed to address the same reliability impacts and align with the same customer expectations.

With respect to cost recovery, the Commission also held (page 34) that the ESRP rider will not include costs for any of AEP Ohio's other enhanced service reliability programs (*i.e.*, non-vegetation management programs) "until such time as the Commission has reviewed the programs, and associated costs, in conjunction with the current distribution system in the context of a distribution rate case as explained above." It is not clear, but this aspect of the Order appears to presume (or to potentially even require) that AEP Ohio would retain the ESRP to broadly track reliability-related

programs and costs – even after conducting a distribution base rate case and possibly beyond the ESP term. To the extent that this conclusion would require the Companies to track costs for all reliability programs once a distribution rate case is filed or beyond the term of the ESP, the Commission erred in imposing this requirement and should eliminate any such requirement on rehearing. Imposing such a requirement would only exacerbate the Commission's rejection of the ESRP programs that were properly proposed in this ESP case under the single-issue ratemaking provisions of SB 221.

It is one thing to provide that the ESRP rider presently being established in this case *may be used* by AEP Ohio in recovering other incremental or enhanced reliability programs that AEP Ohio *may propose* as part of a future distribution base rate case; it is another matter entirely to *require* that any reliability programs proposed or adopted by AEP Ohio as part of a future distribution case be funded and tracked through the current ESRP rider. It would be unfair and "the worst of both worlds" to deny the Companies the opportunity to establish a fully-funded ESRP in this case, while at the same time imposing an obligation to utilize the ESRP in the context of a future traditional distribution rate case to track costs relating to future reliability initiatives.

If the Commission is convinced that a distribution rate case is the more appropriate vehicle than the single-issue ratemaking provision in SB 221 for adopting the other ESRP reliability programs, it should not simultaneously proceed to force the use of an empty rider (other than for the vegetation program) created in an ESP for purposes of a future traditional base rate case. The distribution rate case will capture a representative level of distribution reliability expenditures as reflected in the test period. Consequently, the Commission should clarify on rehearing that AEP Ohio retains the option to dissolve

the ESRP (or limit it to the ongoing vegetation management initiative being approved in this case) when filing a distribution rate case.

Finally with respect to the vegetation management initiative component of the ESRP that was approved, there appears to be a potential mismatch between the vegetation initiative evaluated and approved and the related costs included in the ESRP rider. The Commission evaluated "the proposed vegetation initiative" in discussing the incremental nature of the program and costs (Order, p. 33); considered "the Companies' proposal" in concluding that it more closely aligns the customers' expectations with the Companies' expectations (Order, pp. 33-34); and provided that the rider "will include only the incremental costs associated with the Companies' proposed enhanced vegetation initiative." (Order, p. 34)

Yet, the Commission found that the "enhanced vegetation initiative proposed by the Companies, with Staff's additional recommendations, is a reasonable program that will advance the state policy." (*Id.*) Presuming that this reference is to Staff witness Roberts' recommendations as discussed on page 33 of the Order, this could have a significant impact on the projected costs of the modified vegetation initiative. For example, the recommendation to achieve greater clearance of all overhang above single-phase lines would be very costly with limited overall reliability benefit; and the cost to remove the overhang above single phase lines was not included in the plan. Rather than categorically grafting these additional Staff recommendations onto the Companies' vegetation initiative without a record basis for the implementation and cost impacts of such a hybrid program, the Commission should indicate that AEP Ohio and the Staff can work together to modify the vegetation initiative within the cost level established in the

rider that is based on the Companies' proposal. Alternatively, the Commission should acknowledge that it understands the actual/reconciled costs of the modified program (*i.e.*, including the Staff's recommendations including greater clearance of overhang above single-phase lines) will be significantly higher than were estimated for the Companies' original proposal.

X. The Order is Unlawful and Unreasonable to the Extent That it Intended to Allow Only Half of the Required Funding When Approving the gridSMART Rider and the Order's Modification in this Regard Should be Clarified.

The Companies appreciate that the Commission "strongly supports" AEP Ohio's gridSMART Phase I proposal to implement Advanced Metering Infrastructure (AMI), Distribution Automation (DA) and Home Area Network (HAN) technology. (Order, p. 37). In establishing the initial rider, however, the Commission noted that "recent federal legislation makes matching funds available to smart grid projects." (Order, p. 38). As a result, the Commission directed CSP "to make the necessary filing for federal monies under the American Recovery and Reinvestment Act of 2009 (ARRA) for the balance of the projected costs of gridSMART Phase I." (Order at 38). The Commission established the initial gridSMART rider at "half of the Companies' requested amount."[13] (*Id.*)

To the extent that the Commission merely set the initial rider amount at half the required investment under the rebuttable presumption that AEP Ohio could pursue and obtain full matching funds for the gridSMART Phase I project, AEP Ohio can assure the

[13] The Order references $109 million over the term of the ESP as being the Companies' requested amount and, thus, the Commission indicated its intent to set the initial rider at half that amount or $54.5 million. (Order, p. 38). In reality, the Companies had developed an incremental revenue requirement for gridSMART Phase I of approximately $64 million during the ESP term. (Companies Ex. 1, DMR-4). Thus, in submitting its compliance tariffs after issuance of the Order, the Companies included an initial rider rate designed to recover approximately $32 million or half of the gridSMART Phase I incremental revenue requirement.

Commission that it is pursuing available federal funding with diligence. In other words, if the Commission clarifies that it intends to fully fund the project through rates in the event federal funding is ultimately not made available despite the Companies' best efforts, AEP Ohio would not be presented with an "unfunded" mandate situation.

On the other hand, if the Commission only intends to allow rate recovery of half the required investment using a conclusive presumption that federal funds will be made available, that would constitute a significant error. The Commission lacks the authority in this case to order enhancement programs without recovery by the Companies. The Supreme Court of Ohio found in *Forest Hills Utility Co. v. Pub. Util. Comm.* (1972), *31 Ohio St. 2d 46, 57; 285 N.E.2d 702,709,* that the Commission must provide recovery for improvements it orders utilities to institute. Specifically the Court stated,

> Public Utilities Commission possesses the power to require a utility to render adequate service, but it lacks the authority to require that certain installations and improvements be made before the utility may claim and receive a just and reasonable rate for the services actually being rendered with its existing property and facilities.

Id. Any Commission order to proceed with gridSMART Phase I without commensurate rate relief is in direct contradiction to the *Forest Hills* doctrine and will be subject to reversal by the Supreme Court of Ohio.

Moreover, the Commission's discussion of the ARRA and the availability of federal funding makes assumptions that extended beyond the record in this proceeding. There was no discussion in the Order or the record of the details concerning the actual availability of federal funding or the likelihood (or even possibility) of AEP Ohio obtaining dollar-for-dollar matching funds for its gridSMART Phase I project. The details of federal funding for smart grid projects are not yet fully developed. Indeed, on

April 16, 2009, the U.S. Department of Energy released a "Notice of Intent to Issue a Funding Opportunity Announcement for the Smart Grid Investment Grant Program."[14] The NOI states that "DOE will provide funding covering up to 50% of qualified investments" and that "DOE anticipates providing funds in the range of $500,000 to $20,000,000 for smart grid technology deployment grants." To the extent that DOE implements a cap of $20 million per project and/or funds projects at less than 50%, those factors would be beyond the control of AEP Ohio. (NOI, p. 2) Hence, there are numerous material uncertainties for obtaining full federal matching funds and it would be unreasonable and unlawful for the Commission to establish a conclusive presumption that federal matching funds will be made available for every dollar funded by AEP Ohio and its customers. In addition, the uncertainties of obtaining federal funding also create logistical challenges of timing and scoping the project (*i.e.*, will the Companies need to delay implementation until federal funding is granted and distributed?) Accordingly, the Commission should clarify that it intends to allow full recovery in the gridSMART rider of all prudently incurred expenditures in deploying gridSMART Phase I that are not otherwise offset by federal funds made available for the project.

XI. The Commission's Authorization For the Fuel Adjustment Clause For Only Three Years is Unreasonably Restrictive.

At page 14 of the Order, the Commission states, "[g]iven that the [Fuel Adjustment Clause] mechanism is authorized pursuant to the ESP provision of SB 221, we will limit our authorization, at this time, to the term of the ESP." It would be unreasonable for the FAC, once authorized, simply to expire without providing for either

[14] The NOI can be found at the following Internet address: https://www.fbo.gov/index?&s=opportunity&mode=form&id=ebe206ba070c516398e5f68a1ad0979f&tab=core&tabmode=list.

its renewal or replacement by a suitable substitute. This is particularly true since a fuel adjustment clause would be required in an MRO (§4928.142(D), Ohio Rev. Code), another ESP (§4928.143(B)(2)(a), Ohio Rev. Code) and even in the context of a withdrawn ESP application (§4928.143(C)(2)(b), Ohio Rev. Code). Accordingly, the Companies respectfully request that, on rehearing, the Commission find that the FAC mechanism will remain in effect for the term of the ESP and until specifically ordered otherwise by the Commission.

XII. The Commission's Modification of the Companies' Proposed Fuel Adjustment Clause Baseline in the Pre-Electric Security Plan Standard Service Offer Rates is Unreasonable.

At pages 18-19 of the Order, the Commission addressed what the appropriate FAC baseline component of the current SSO rate should be. The Companies had proposed to establish their baseline FAC rates by identifying the FAC components of their current SSOs. The Companies began with the electric fuel component (EFC) rates in effect as of October 1999 that were unbundled as part of the Electric Transition Plan (ETP) proceedings; added additional rate elements corresponding to 1999 amounts for additional categories of costs that are included in their proposed FAC mechanism; and then adjusted the 1999 rate levels for the EFC rates and the additional rate elements for subsequent rate changes, in order to identify the portion of the current 2008 SSO rate that is the FAC baseline rate.

The Staff had recommended that the FAC baseline component should be determined based on a measure of FAC costs being recovered through the current SSO. Staff recommended using 2007 actual cost data, escalated by 3 percent for CSP and 7

percent for OPCo, as a reasonable proxy for 2008 actual costs, since there is no, and could not be any, record evidence of calendar year 2008 actual costs. Staff contended that utilizing actual 2007 costs and updating them to 2008 is appropriate because, in Staff's view, the Companies should be recovering that amount of costs through their existing SSOs. The Staff also believed its proposal was reasonable because it produced a result very close to the result produced by the Companies' methodology.

At page 19 of the Order, the Commission agreed with the Staff's value for the appropriate FAC baseline. In support of its finding, the Commission stated that "the Companies and Staff proposed methodologies to obtain a proxy for 2008 fuel costs" and that "[w]hile both had a different starting point to the calculation of the 2008 proxy, we agree that in the absence of known actual costs, a proxy is appropriate to establish a baseline."

While the two methods that the Companies and the Staff have proposed do produce values for the baseline FAC rate that are close to one another, the methodologies are not the same. Specifically, the Companies have proposed a methodology that identifies the portion of the 2008 SSO rate that correlates to the new FAC rate; they have not proposed a methodology that is based on a proxy for 2008 fuel costs. As Companies' witness Nelson explained, using the Companies' approach to determine the FAC baseline rate avoids the baseline FAC and the non-FAC portions of the 2008 SSO generation rates floating in response to whatever assumption is made regarding the amount of FAC costs being recovered by those rates. (Companies' Ex. 7B, pp. 2-5). Accordingly, the Companies request that the Commission adopt the Companies' proposed methodology for identifying the baseline FAC components of their 2008 SSOs.

XIII. In Deferring Judgment on a Methodology for the Significantly Excessive Earnings Test (SEET) and Directing its Staff to Convene a Workshop for Developing a Methodology to be Applied to All Electric Utilities, the Commission Unreasonably Failed to Note the Appropriateness of the Companies' Proposal for Having the SEET Applied to Them on a Combined Basis and That How That Would be Done Would be Considered in the Workshop and That a Common Methodology Does Not Require a Methodology Identical for Each Electric Utility.

At pages 65-69 of the Order, the Commission discussed the various proposals the parties made regarding the Significantly Excessive Earnings Test (SEET) that Section 4928.143(F), Ohio Rev. Code, requires the Commission to apply after each year of the ESP. The Commission stated that determining the appropriate methodology for the SEET is extremely important. The Commission found that a common methodology for the SEET is appropriate, and it directed its Staff to convene a workshop for the purpose of developing such a methodology. However, the Commission recognized that the Companies need clarification regarding how the SEET would be applied to them so that they can decide whether to accept or reject the ESP as modified by the Order. Accordingly, the Commission resolved important issues regarding how the SEET would be applied, including the exclusion from the SEET of impacts from off-system sales margins and deferred fuel costs.

On rehearing, the Companies request that the Commission provide additional clarification regarding the SEET and the scope of proposals that may be addressed by the upcoming workshop. First, the Companies explained that the SEET logically should apply to them on a combined basis because investments in them are made, and their operations are conducted, on a combined basis. Applying the SEET to the Companies on a combined basis was supported by the Staff as well. Staff's witness Cahaan testified that

the asymmetric risk associated with the SEET "would also be mitigated if the earnings of both jurisdictional operating companies could be taken into account." (Staff Ex. 10, p. 25). He noted that since "there is a commonality between operating companies in terms of both operations and planning, the application of an earnings test might be able to incorporate this fact into any resultant action in a way as to mitigate asymmetric risk. I would view this approach as consistent with the concept of 'significantly' as a fairness issue and not merely a statistical exercise." (*Id.*). Accordingly, the Companies ask that the Commission clarify the appropriateness of treating them on a combined basis for purposes of the SEET and that how that would be done is a proper subject to be considered in the workshop process.

Second, the Companies ask the Commission to confirm, on rehearing, that the Commission's finding that a common methodology for the SEET is appropriate does not mean that the methodology must be identical for each electric utility. In that regard, the Companies pointed out that there are significant differences between the Ohio electric utilities that can have an impact on the appropriate SEET methodology for, and its application to, a particular electric utility. For example, the FirstEnergy electric utilities are distribution-only companies that have divested their generation and transmission assets, while the AEP Ohio Companies continue to own their generation and transmission assets. As another example, Duke Ohio and The Dayton Power & Light Company differ from the AEP Ohio Companies because neither of them has an affiliated electric utility in Ohio. Such differences can lead to differences in the appropriate SEET methodology, and its application, to the subject electric utility.

CONCLUSION

For the foregoing reasons, the Commission should grant rehearing or clarification as requested by the Companies.

Respectfully submitted,

Marvin I. Resnik, Counsel of Record
Steven T. Nourse
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1606
Fax: (614) 716-2950
Email: miresnik@aep.com
stnourse@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 South High Street
Columbus, Ohio 42315
Telephone: (614) 227-2270
Fax: (614) 227-2100
Email: dconway@porterwright.com

Counsel for Columbus Southern Power Company and the Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Application for Rehearing was served by U.S. Mail and electronic mail upon counsel identified below for all parties of record this 17th day of April, 2009.

Marvin I. Resnik

Warner L. Margard John H. Jones Thomas G. Lindgren Assistant Attorneys General Public Utilities Commission of Ohio 180 East Broad Street Columbus, Ohio 43215	Maureen R. Grady Terry L. Etter Jacqueline Lake Roberts Michael E. Idzkowski Richard C. Reese Assistant Consumers' Counsel 10 West Broad Street Columbus, Ohio 43215-3485
David F. Boehm Michael L. Kurtz Boehm, Kurtz & Lowry 36 East Seventh Street Suite 1510 Cincinnati, Ohio 45202	John W. Bentine Mark S. Yurick Matthew S. White Chester, Wilcox & Saxbe, LLP 65 East State Street Suite 1000 Columbus, Ohio 43215-4213
Samuel C. Randazzo Lisa G. McAlister Joseph M. Clark McNees, Wallace & Nurik, LLC 21 East State Street 17th Floor Columbus, Ohio 43215-4228	David C. Rinebolt Colleen L. Mooney Ohio Partners for Affordable Energy 231 West Lime Street P.O. Box 1793 Findlay, Ohio 45839-1793
Barth Royer Bell & Royer Co., LPA 33 South Grant Avenue Columbus, Ohio 43215-3927	M. Howard Petricoff Mike Settineri Betsy L. Elder Stephen M. Howard Vorys, Sater, Seymour & Pease, LLP 52 East Gay Street Columbus, Ohio 43216-1008

Bobby Singh Integrys Energy 300 West Wilson Bridge Road Worthington, Ohio 43085	Gregory H. Dunn Christopher L. Miller Andre T. Porter Schottenstein, Zox, Seymour & Pease, LLP 250 West Street Columbus, Ohio 43215
Thomas J. O'Brien Bricker & Eckler 100 South Third Street Columbus, Ohio 43215	Grace C. Wung McDermott, Will & Emery, LLP 600 Thirteenth Street, N.W. Washington, D.C. 20005
Michael R. Smalz Joseph E. Maskovyak Ohio State Legal Services Association 555 Buttles Avenue Columbus, Ohio 43215	Cynthia A. Fonner Constellation Energy Group, Inc. 550 West Washington Blvd. Suite 3000 Chicago, Illinois 60661
Langdon D. Bell Bell & Royer Co., LPA 33 South Grant Avenue Columbus, Ohio 43215-3927	Kevin Schmidt Ohio Manufacturers' Association 33 North High Street Columbus, Ohio 43215-3005

sbaron@jkenn.com lkollen@jkenn.com charlieking@snavely-king.com mkurtz@bkllawfirm.com dboehm@bkllawfirm.com grady@occ.state.oh.us etter@occ.state.oh.us roberts@occ.state.oh.us idzkowski@occ.state.oh.us stnourse@aep.com dconway@porterwright.com jbentine@cwslaw.com myurick@cwslaw.com mwhite@cwslaw.com khiggins@energystrat.com barthroyer@aol.com gary.a.jeffries@dom.com nmoser@theOEC.org trent@theOEC.org	jmaskovyak@oslsa.org ricks@ohanet.org tobrien@bricker.com david.fein@constellation.com cynthia.a.fonner@constellation.com mhpetricoff@vssp.com smhoward@vssp.com cgoodman@energymarketers.com bsingh@integrysenergy.com lbell33@aol.com kschmidt@ohiomfg.com sdebroff@sasllp.com apetersen@sasllp.com sromeo@sasllp.com bedwards@aldenlaw.net sbloomfield@bricker.com todonnell@bricker.com cvince@sonnenschein.com preed@sonnenschein.com

henryeckhart@aol.com	ehand@sonnenschein.com
nedford@fuse.net	erii@sonnenschein.com
rstanfield@nrdc.org	tommy.temple@ormet.com
dsullivan@nrdc.org	agamarra@wrassoc.com
ed.hess@puc.state.oh.us	steven.huhman@morganstanley.com
thomas.lindgren@puc.state.oh.us	dmancino@mwe.com
werner.margard@puc.state.oh.us	glawrence@mwe.com
john.jones@puc.state.oh.us	gwung@mwe.com
sam@mwncmh.com	stephen.chriss@wal-mart.com
lmcalister@mwncmh.com	lgearhardt@ofbf.org
jclark@mwncmh.com	cmiller@szd.com
drinebolt@aol.com	gdunn@szd.com
cmooney2@columbus.rr.com	aporter@szd.com
msmalz@oslsa.org	