

1 BEFORE
2 THE PUBLIC UTILITIES COMMISSION OF OHIO
3 REBUTTAL TESTIMONY OF
4 PHILIP J. NELSON
5 ON BEHALF OF
6 COLUMBUS SOUTHERN POWER COMPANY
7 AND
8 OHIO POWER COMPANY
9 CASE NOS. 09-872-EL-FAC AND 09-873-EL-FAC
10

11 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

12 A. My name is Philip J. Nelson. My business address is 1 Riverside Plaza, Columbus,
13 Ohio 43215.

14 **Q. ARE YOU THE SAME PHILIP J. NELSON THAT FILED DIRECT**
15 **TESTIMONY IN THIS PROCEEDING?**

16 A. Yes.

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

18 A. I respond to recommendations made by Industrial Energy Users-Ohio (IEU) witness
19 J. Edward Hess and OCC witness Daniel J. Duann, Ph.D. regarding the 2008
20 Settlement Agreement. I also rebut Mr. Hess's recommendation to credit the 2008
21 payment for non-delivery with [REDACTED] against the OPCo
22 deferred fuel balance, and his recommendation for CSP to refund \$ [REDACTED] per ton for
23 coal received in 2009 in connection with the [REDACTED] Contract.

24 **JANUARY 2008 SETTLEMENT AGREEMENT**

25 **Q. DO THE ISSUES YOU ADDRESSED IN YOUR DIRECT TESTIMONY IN**
26 **CONNECTION WITH AUDIT RECOMMENDATION NO. 1 APPLY TO THE**
27 **IEU'S AND OCC'S PROPOSED TREATMENT OF THE 2008 SETTLEMENT**
28 **AGREEMENT PROCEEDS?**

1 A. Yes. While Audit recommendation No. 1 suggested that the Commission review the
2 transaction to determine whether it is appropriate to reduce OPCo's deferred fuel
3 balance, IEU and OCC recommend that the Commission actually conclude that a
4 reduction of the current under-recovery is the appropriate treatment. OCC witness
5 Duann, however, suggests the credit against OPCo's FAC deferral balance for the
6 Reserve component be larger than the \$[REDACTED] million discussed in the Audit report and
7 my direct testimony. He believes the credit should be established at \$[REDACTED] million for
8 the Reserve immediately with only a partial true-up in the future.

9 **Q. DO YOU HAVE COMMENTS ON THEIR RECOMMENDATIONS?**

10 A. Yes. I have already discussed the serious flaws in reducing OPCo's 2009 deferred
11 fuel balance for transactions that occurred in 2008 prior to the implementation of the
12 FAC in my direct testimony and will not repeat them here. Both Mr. Hess and Dr.
13 Duann claim that there is equity in the treatment that they propose. However, I can
14 only characterize this treatment as unfair retroactive ratemaking, with the added
15 distinction that it is highly selective single-issue retroactive ratemaking.

16 **Q. WHY DO YOU CONSIDER THE OCC/IEU-PROPOSED TREATMENT**
17 **SELECTIVE RETROACTIVE RATEMAKING?**

18 A. The retroactive treatment is their recommendation to treat OPCo as if it had a fuel
19 clause in 2008, when clearly it did not, and the selective nature of their
20 recommendation is to only capture the items that reduced fuel expense in 2008.
21 Because of the dramatic increases in 2008 fuel costs, I can assure you that OPCo
22 would have been very desirous of having a fuel clause in 2008. The limited
23 reductions in fuel expense associated with the 2008 Settlement Agreement in no way

1 off-set the overall increase in fuel costs experienced by OPCo in 2008. In fact, fuel
2 cost increases were the principal driver behind OPCo's return on equity declining
3 from 12.4% in 2007 to 9.4% in 2008. OPCo is not complaining about the effects of
4 the RSP and the ESP or in any way attempting to retroactively modify those approved
5 rate plans; on the contrary, OPCo seeks to enforce those rate plans. Rather, it is the
6 OCC/IEU position that effectively seeks to go back and retroactively modify the fact
7 that no FAC existed in 2008 and that the new FAC baseline and mechanism approved
8 in the ESP decision did not begin until 2009. Therefore, IEU and OCC representation
9 that fairness or equity supports their position is not supported.

10 **TONNAGE SHORTFALL SETTLEMENT**

11 **Q. PLEASE DISCUSS MR. HESS'S RECOMMENDATION TO CREDIT THE**
12 **TONNAGE SHORTFALL SETTLEMENT THAT OPCO**
13 **RECEIVED IN 2008 AGAINST THE 2009 FUEL UNDERRECOVERY?**

14 **A.** Please see Companies witness Rusk's rebuttal testimony filed in this proceeding for a
15 discussion of the transaction. Here again, the recommendation is very one-sided.
16 This payment was made to OPCo because the Supplier failed to deliver a significant
17 number of tons of coal in 2008. OPCo was required to go to the market to replace the
18 tons not delivered, since, as has been discussed, the coal market was very tight in
19 2008 and inventories extremely low. It is my understanding that the cost of
20 replacement spot coal at OPCo plants in 2008 was approximately equal to the
21 liquidated damages. The net effect of these 2008 developments relating to fuel costs
22 was to reduce OPCo's earnings, even after considering those transactions where
23 OPCo received payments in 2008.

CONTRACT SUPPORT

Q. DO YOU AGREE WITH MR. HESS'S RECOMMENDATION TO RECOGNIZE THE PRICE DISCOUNT THAT MIGHT APPLY IN 2013 AS IF IT HAD ACTUALLY OCCURRED IN 2009?

A. Absolutely not. The effect of Mr. Hess's recommendation is to retroactively modify a contract provision in order to reduce CSP's 2009 actually incurred fuel expense. This contract adjustment was not considered imprudent by the Auditor, in fact, as referenced by Company witness Rusk in his rebuttal testimony, the Auditor was complementary of AEPSC's renegotiation of this contract. In this instance, Mr. Hess is not clawing back, but he is attempting to claw forward to capture potential future value and speculatively assume that it applies to the 2009 Audit period. This is as equally problematic as his recommendation regarding the 2008 Settlement Agreement, for the same reasons that were discussed earlier in my testimony.

Q. WOULD YOU PLEASE SUMMARIZE THE COMPANIES POSITION ON THE ISSUED RAISED BY THE IEU AND OCC WITNESSES?

A. Yes. The Audit period of 2009 was clearly established by the ESP order and the RFP that resulted in the hiring of the Auditor for this proceeding. The auditor was to review the appropriateness of the accounting of the FAC costs and the prudence of decisions made. None of the Companies agreements with its coal suppliers were found to be imprudent by the Auditor. The accounting entries related to the settlements addressed in the Audit Report were in accordance with GAAP as discussed by Companies witness Dooley. OPCo and CSP experienced increase fuel costs in 2008 and had a fuel clause been in place in 2008 (which it was not) the

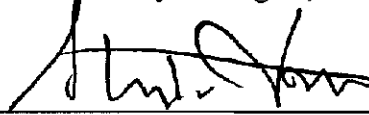
1 Companies deferred fuel balance would have been higher at the end of 2009, not
2 lower. In any case, the Commission should reject OCC's and IEU's improper
3 attempts to clawback and claw forward value that properly remains outside of 2009,
4 the established audit period.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A. Yes it does.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Public Version of the Rebuttal Testimony of Philip J. Nelson on behalf of Columbus Southern Power Company and Ohio Power Company was served by U.S. Mail upon the individuals listed below this 23rd day of August, 2010.



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