

FILE

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

In the Matter of the Application of Ohio)
Power Company for Approval of its Electric) Case No. 08-918-EL-SSO
Security Plan; and an Amendment to its)
Corporate Separation Plan.)

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S COMBINED:**

**MOTION TO ESTABLISH A PROCEDURAL SCHEDULE FOR THE REMAND
PROCEEDING AND TO REJECT OR HOLD IN ABEYANCE THE TARIFFS
FILED ON MAY 11, 2011, AND**

**MOTION TO PROSPECTIVELY CONVERT THE AFFECTED RATES TO
BEING COLLECTED SUBJECT TO REFUND, AND**

REQUEST FOR EXPEDITED RULING ON BOTH MOTIONS

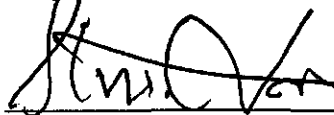
The Commission issued a May 4, 2011 Entry ("Entry") in response to an April 19, 2011 decision by the Supreme Court of Ohio in Case No. 2009-2022 involving appeals from the Commission's decision in these cases ("ESP Order"). As more fully explained in its application for rehearing filed on May 6 in this docket regarding the Entry, Columbus Southern Power Company and Ohio Power Company (collectively referred to as the "Companies" or "AEP Ohio") respectfully submit that the Entry's approach of summarily ordering tariffs that back out the POLR and environmental rate increases that were adopted as part of the ESP order – prior to considering the issues remanded to the Commission – is premature and would cause substantial harm to AEP Ohio. Separate

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and apart from its Application for Rehearing, AEP Ohio hereby makes two additional requests to address the situation presented by the Entry. The first request is that the Commission establish a procedural schedule for the remand proceeding and, on that basis, reject the tariffs or hold them in abeyance during the pending remand. In this regard, AEP Ohio commits to act quickly and in accordance with the Commission's established schedule. The alternative and least-preferred request is to ask that the Commission prospectively convert the existing POLR charge (and, to the extent necessary, the environmental charge) to being collected subject to refund as explained below.

Pursuant to O.A.C. 4901-1-12, AEP Ohio requests that both motions be considered and granted on an expedited basis. The attached memorandum in support explains and supports AEP Ohio's request in more detail.

Respectfully Submitted,



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MEMORANDUM IN SUPPORT

BACKGROUND AND OVERVIEW

On April 19, 2011, the Supreme Court of Ohio issued a Slip Opinion in Case No. 2009-2022 regarding the 13 alleged errors raised by the Ohio Consumers' Counsel (OCC) and the Industrial Energy Users-Ohio (IEU) in connection with the Commission's 2009 decision in AEP Ohio's ESP in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO. *See* Supreme Court of Ohio Slip Opinion No. 2011-Ohio-1788. On May 4, 2011, the Court issued its mandate – making the Slip Opinion the final decision of the Court and passing jurisdiction back to the Commission in order to conduct a remand proceeding on (hereinafter referred to as the Court's "Decision"). More specifically, the Decision reversed the Commission's ESP order on three issues and remanded two of those issues (POLR charge and environmental carrying charge) to the Commission for further consideration, since the first issue was essentially moot. The Court did not rule on the application of its decisions to AEP Ohio's rates, in fact, the Court left open the option for the Commission to provide further basis and authority for the decision the Commission already made in a remand proceeding.

As discussed below and further in AEP Ohio's Application for Rehearing, the Court's Decision only found that the record basis was inadequate for the POLR charge to be labeled cost-based and that the legal basis selected by the Commission for the environmental carrying charges was not available for that purpose so another basis should be evaluated. The normal process for implementing the Court's decision is for the

Commission to conduct a remand proceeding before making any prospective rate changes; this applies equally to any Court reversal involving an increase in rates (as well as any potential rate decrease involved here). Just as it would be inappropriate in another case to implement a rate increase in response to a Court Decision prior to conducting a remand proceeding, it is inappropriate in this case where a *potential* rate decrease is involved. More importantly, the Court stopped short of a vacatur regarding the Commission's approval of both the POLR charge and the environmental carrying charge. While R.C. 4903.13 explicitly allows the Court to vacate Commission orders on appeal, the Court did not do so here. The Court remanded the issues to the Commission for further consideration and that is a process that should be respected and allowed to occur.

Thus, the POLR and environmental charges should remain in effect under the Court's reversal until such time as the Commission makes a determination in the remand proceeding (which would have prospective effect, if any, from that point forward). Until such time, the Commission should not presume that either charge is unlawful. Consequently, the tariffs filed today in compliance with the Entry should be rejected or held in abeyance pending the outcome of the remand proceeding. AEP Ohio also submits that a two-step approach will be confusing and irritating to customers, as explained below. Thus, AEP Ohio proposes that the Commission establish an expeditious procedural schedule and, while the brief remand proceeding is pending, reject or hold in abeyance the tariffs filed to implement the Entry. On the basis of such a timely remand decision, the Commission would determine whether to leave the existing rates in place or to prospectively implement any reductions at that time. If the Commission adopts this request, AEP Ohio agrees to withdraw its May 6 Application for Rehearing.

If the Commission is not able to evaluate and decide those remand issues before the first billing cycle of June 2011 (or the Commission decides it is necessary to conduct further proceedings such as an evidentiary hearing or additional briefing), AEP Ohio alternatively requests that the rates be converted to being collected subject to refund from that time forward until the time of the Commission's final remand order. That remedy would also only involve one step of potential rate changes and would avoid the potential confusion associated with a two-step process. Prospectively converting the rates to being subject to refund, however, is not preferred and should not be necessary – especially relative to the remand issues involving the environmental charge.

ARGUMENT

I. The Commission should establish an expedited procedural schedule for the remand proceeding that contemplates a one-step rate change (if any) and reject the tariffs or hold them in abeyance during the pending remand.

The Court's Decision instructed the Commission to reconsider on remand both whether there is an alternative rationale and evidentiary support for the POLR charges and whether there is another statutory basis, among the numerous options available, for the environmental carrying cost charges. Rather than conducting the remand process to address those two issues, the Commission *sua sponte* decided to order tariffs to be filed that would completely remove the authorized charges – also permitting AEP Ohio to come back later and attempt to reinstate those charges. In particular, the Entry's two-step process contemplates that: (1) AEP Ohio file tariffs for approval that remove the POLR and non-fuel generation rate increases approved in the ESP Order through tariffs filed on May 11, and (2) AEP Ohio make a filing that could result in reinstating the same charges

or possibly instituting new, similar charges at a date in the near future. Rather than continue with the Commission's two-step approach, which AEP Ohio submits could be confusing and irritating to customers and have unintended consequences on shopping, the Commission should implement an orderly remand proceeding contemplated by the Court's Decision, and its precedent, prior to deciding whether to adopt tariffs that implement rate reductions.

One complexity and perhaps unintended consequence of the two-step process is that, even as the POLR and non-fuel generation rates are decreased, FAC rates will go up and could cause net increases for certain customers. Based on the ESP Order's complex rate cap restrictions, AEP Ohio had to create dozens of different FAC rates. In conjunction with backing out the POLR and environmental increases per the Entry, AEP Ohio had to recalibrate the FAC rates in order to comply with the ESP Order's rate caps and minimize the amount of fuel deferrals going forward (as explained and supported in the tariff filing also made today in this docket). Consequently, some customers may experience net rate increases as a result of implementing the Entry.

Another important consequence of this approach relates to the limited bypassability aspect of the POLR charge approved in the ESP Order. Specifically, the ESP Order decided to only award 90% of AEP Ohio's request and addressed the other portion of risk by saying that shopping customers can elect to bypass the POLR charge during the time they shop by agreeing to pay a market rate if they return. (ESP Order at 40.) This aspect of the POLR charge was adopted part-and-parcel with the approved POLR charge increase that was remanded to the Commission. When the approved POLR charge is backed out of AEP Ohio's tariffs, the prior POLR charge will remain and will

once again be strictly non-bypassable. During this period when step 1 of the Entry is in effect, shopping customers who have waived the POLR charge under the terms of the ESP Order will once again have to pay a POLR charge during the period they are shopping (though it would be the lower, previous POLR charge).

While the overwhelming majority of AEP Ohio's shopping customers recognize the value of the current POLR charge and have voluntarily elected to keep paying it during the time they are shopping, a small fraction has opted to bypass the POLR charge and pay market if they return (currently about 263 out of 7,780 shopping customers – or about 3% – have viewed the market risk as being more favorable than paying the POLR charge while shopping). Such considerations strongly support holding the tariffs in abeyance during the remand proceeding.

Thus far, the Commission has denied AEP Ohio its right to be heard on the remand issues prior to making any rate changes. Without a decision to reject the tariffs or hold them in abeyance, harm to AEP Ohio is substantial and irreparable if the tariffs are approved and implemented. AEP Ohio's right to be heard on the remand issues cannot be remedied if the POLR and environmental charges are eliminated before it has been afforded the opportunity to be heard on the merits of the remand issues.

The harm to AEP Ohio of being denied an opportunity to be heard on remand before modification of those rates is magnified by the fact that the Commission's Entry presumption that the *entire* amounts of these charges approved as part of the Companies' ESPs should be eliminated. By denying the Companies any opportunity to be heard first on the remand issues before deciding them, the Commission appears to have established a rebuttable presumption that *no portion* of either charge can be supported on remand. Fast

action at the expense of procedural fairness and accuracy, is not a lawful or reasonable regulatory outcome. The undue harm to AEP Ohio can be avoided if the Commission rejects the tariffs or hold them in abeyance pending the remand proceeding.

Regarding the non-fuel generation rate increase associated with 2001-2008 environmental investment, the Commission is to determine on remand whether another portion of the ESP statute supports recovery of these environmental carrying costs. The Commission should conduct an expedited remand process to verify that an alternative basis in the ESP statute exists to support the charge – independent of the process employed to address the POLR charge issues. For example, division (B)(2)(d) of the ESP statute authorizes the Commission to establish “terms, conditions, or charges relating to ... carrying costs ...” That provision provides the Commission with an alternative basis to support the continued recovery of the challenged environmental carrying charge. In addition, at least two other subdivisions of ESP statute also provide a statutory basis for the environmental carrying cost charges: (B)(2)(b) (an environmental expenditure for any generating facility of the electric distribution utility) and (B)(2)(e) (which authorizes automatic increases in any component of the standard service price).

Whatever the Commission’s reservations or concerns may be about the cost basis for the POLR charge, there is no dispute regarding the approved environmental charge that: (1) the investments were required by existing environmental regulations, (2) they were incremental investments not previously reflected in rates, and (3) the investments were prudently-incurred costs that were actually made by AEP Ohio. Thus, the Commission should act expeditiously to determine on remand (even if it is separate from any determination regarding the POLR charge) that the environmental charge be

sustained. There is no reason to conduct a lengthy remand proceeding regarding this narrow legal question – but the Commission needs to provide due process prior to implementing any reduction of the non-fuel generation rate.

Finally, it makes little sense for the Commission to arrive at a snap judgment that overturns the Commission's decision to adopt a "package deal" in the ESP order. AEP Ohio's ESP, approved by the Commission, necessarily reflects a total package that the Commission held to be more favorable, in the aggregate, than the expected results under an MRO. Regarding approval of an ESP, the General Assembly provided that the Commission shall approve an ESP if it is more favorable, in the aggregate, than the expected results of an MRO for that utility. Ohio Rev. Code Ann. 4928.143(C)(1). In deciding AEP Ohio's ESP Cases, the Commission repeatedly found that the ESP (including the non-bypassable POLR charge and the environmental carrying charge) met this standard. (ESP Cases, Decision and Order at 72; Entry on Rehearing at 51.) The Commission should carefully consider any unilateral rate adjustments as part of the remand, not rush to judgment as the Entry seems to do.

Since the remand proceeding is the last stage of the "dust settling" around the ESP order, any modification of the package ESP deal during the remand proceeding could still trigger AEP Ohio's right to withdraw under division (C)(2) of the ESP statute. In particular, on March 23, 2009, when the Companies filed their compliance tariffs under the ESP Order in these dockets, they explicitly indicated that they "do not waive their right under § 4903.10, Ohio Rev. Code, to seek rehearing or their right under § 4928.143 (C)(2), Ohio Rev. Code, regarding withdrawal of their Application." Subsequently, the Companies attempted to reserve their right to withdraw until after the ESP plan was

finalized through rehearing and appeal was litigated on rehearing. IEU challenged the Commission's holding on appeal, through Proposition of Law No. 2. The Court refused to address the issue yet, because AEP Ohio has not yet attempted to withdraw. (Decision at ¶ 48.)

If there are modifications during the remand proceeding that cause AEP Ohio to withdraw from the ESP, the prior rate plan will become effective and AEP Ohio can re-file either an ESP or an MRO. Thus, any modifications on remand could conceivably result in AEP Ohio withdrawing from the ESP and/or permanently bypassing ESPs altogether by filing a Market Rate Offer to finish 2011 (and thereby preclude the need to rule on AEP Ohio's post-2011 ESP currently pending before the Commission in Case Nos. 11-346-EL-SSO et al.) While that is not AEP Ohio's preference, the outcome of the remand proceeding could force AEP Ohio to seriously entertain one of those options. The foregoing considerations support an approach that preserves the *status quo* and continues to implement the ESP Order until such time as a remand decision is made regarding whether rate reductions are appropriate when implementing the Court's Decision.

Accordingly, AEP Ohio requests that the Commission establish a procedural schedule for conducting the remand proceeding and, on that basis, reject the tariffs or hold them in abeyance. AEP Ohio does plan to make a filing to address the merits of the remand issues and submits that an orderly and efficient procedural schedule defined up front by the Commission would help address the timing of AEP Ohio's filing and manage expectations and timing of the other Parties' filings. Without a procedural schedule, the Parties will act on their own and make random or overlapping requests resulting in an

inefficient use of the Commission's limited resources as well (e.g., the May 10 motion filed by the Industrial Energy Users- Ohio). At this point in time, the process associated with the remand proceeding (and even whether the proceeding will occur) is unknown and undefined. Whether it is a filing under Paragraph 5 of the Entry or a briefing or hearing opportunity that is provided for in a procedural schedule, AEP Ohio does intend to make a filing to support retention of the existing POLR and environmental charges in light of the Court's decision. If the Commission adopts this request, AEP Ohio agrees to withdraw its May 6 Application for Rehearing.

II. The least-preferred alternative is for the Commission prospectively convert the existing POLR charge (and only to the extent necessary to delay ruling on the environmental charge remand issue) to being collected subject to refund as explained below, for such time as the Commission may deem necessary to adjudicate the remand issues.

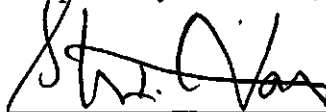
In the alternative, AEP Ohio would prefer prospectively converting the rates to being collected subject to refund over a two-step process for implementing any rate changes. Prospectively making the two involved rates subject to refund would also simultaneously preserve the outcome from both AEP Ohio's perspective and its customers' perspective – to the extent more time is needed to address the remand issues – without subjecting customers to the potential for two stages of rate changes associated with the remand proceeding. Further, the additional unintended consequences outlined above in connection with the first remedy are also avoided through this approach. Thus, as a disfavored but acceptable alternative to holding the tariffs in abeyance pending the remand proceeding, the Commission could prospectively convert the involved POLR and environmental rates into being collected subject to refund during the period when remand decision may remain pending.¹

¹ AEP Ohio does not believe the Commission has authority to unilaterally implement rates subject to refund. But AEP Ohio prefers that remedy here over a decision to implement a two-step process for rate changes. To the extent that the Commission is not willing to hold the tariffs in abeyance during the remand proceeding, AEP Ohio consents to prospectively converting the POLR and environmental charges to being subject to refund in this case – for such period of time until the Commission's remand order. In agreeing to this alternative remedy (versus the first request), however, AEP Ohio is not agreeing to withdraw its Application for Rehearing. In any case, AEP Ohio reserves its right to challenge any Commission-ordered implementation of rates subject to refund in a future case.

CONCLUSION

For the foregoing reasons, the Commission should reject the tariffs filed to implement the Entry or hold them in abeyance while pursuing an expeditious procedural schedule to address the remand issues prior to implementing any resulting rate changes. To the extent that the Commission cannot issue an expeditious decision or wants to utilize a more extensive process than legal briefs (such as testimony and an evidentiary hearing), the least-preferred alternative request is to ask that the Commission prospectively convert the involved POLR and environmental rates into being collected subject to refund during the period when a remand decision may remain pending.

Respectfully Submitted,



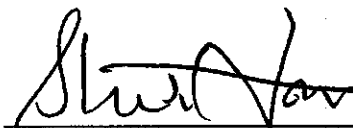
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Combined Motions has been served upon the below-named counsel and Attorney Examiners via electronic mail this 11th day of May, 2011.



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