

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIVISION  
2011 MAY 31 PM 4:55  
PUCO

In the Matter of the Application )  
of Columbus Southern Power )  
Company and Ohio Power Company ) Case No. 11-1337-EL-RDR  
to Update Their Environmental )  
Investment Carrying Cost Riders )

REPLY COMMENTS OF COLUMBUS SOUTHERN POWER COMPANY AND  
OHIO POWER COMPANY IN SUPPORT OF APPLICATION

BACKGROUND

Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo), collectively referred as "the Companies" or "AEP Ohio," filed their application initiating this case on March 18, 2011. In AEP Ohio's Electric Security Plan (ESP) proceeding (Case Nos. 08-917-EL-SSO and 08-918-EL-SSO), the Commission authorized the Companies to recover the incremental capital carrying costs associated with environmental investments made during the three-year ESP period. (ESP Opinion and Order, March 18, 2009, p. 30). In its July 23, 2009 Entry on Rehearing, the Commission confirmed that the Companies should file an application to request recovery of actual environmental investment expenditures after those expenditures have been incurred. (Entry on Rehearing, p. 14, ¶42). In doing so, the Commission cited its Staff's example of how these annual recovery requests would be made. The Staff "envisioned an application in 2010 for recovery of 2009 actual environmental investment costs and annually thereafter for each succeeding year to reflect the actual expenditures." (*Id.*) This process was followed in connection with the Companies' initial funding of the

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 SM Date Processed JUN 01 2011

Environmental Investment Carrying Charge rider (EICCR) for 2009 environmental investments in Case No. 10-155-EL-RDR. In that case, the Commission (through its August 25, 2010 Finding and Order and October 22, 2010 Entry on Rehearing) approved recovery of carrying charges on the incremental 2009 environmental investment and granted the Companies' updated application.

After the application was filed to initiate this case, parties filed comments on May 20, 2011. The Staff's comments indicated that it completed inspections of capital expenditures made during 2010 at the Conesville and Amos power plants; it reviewed invoices and source documents supporting the capital costs included in AEP Ohio's continuing property records; and it found no errors or discrepancies. The Office of the Ohio Consumers' Counsel (OCC) and the Industrial Energy Users- Ohio (IEU) filed comments opposing the Companies' application. AEP Ohio submits these reply comments in support of its application.

### **REPLY COMMENTS**

**A. This case merely involves implementation of the ESP Order and should not be used as an opportunity to revisit the legal bases supporting the EICCR.**

Predictably, the OCC and IEU both attempt to block the current EICCR application based on the Supreme Court of Ohio's April 19, 2011 decision in Case No. 2009-2022 (the appeals from the ESP Order). OCC argues (at 4-5) that the Commission is not constrained to follow the ESP Order regarding the EICCR, because the Court's remand in ¶ 35 of the Decision had no explicit limitation regarding the timeframe that the remand proceeding could examine recovery of environmental carrying charges. Similarly, IEU identifies this case (at 3) as one of "several opportunities" to broadly

apply the Court's Decision and suggests that the Commission should build on its May 4 remand Entry by denying this Application in order to "continue the process of correcting the revenue recovery of the ESP." The position of OCC and IEU should be rejected, because the EICCR was not part of the appeal and this case merely involves implementation of aspects of the ESP Order not related to the remand proceeding.

Separate and apart from the Commission's decision to adjust base generation rates for carrying charges associated with pre-ESP environmental investment, the ESP Order authorized AEP Ohio to recover a carrying charge for incremental environmental investments made during the ESP term, based on the Environmental Investment Carrying Charge Rider (EICCR). (*ESP Cases*, Opinion and Order at 28; Entry on Rehearing at 14.) The base generation rate increase was the subject of OCC's Sixth Proposition of Law being addressed by the Court in ¶ 35 of the Decision and the EICCR was not. Beyond the scope of the remand proceeding required by the Court, the Commission does not have continuing jurisdiction over the ESP Order and it would be unlawful to go back and modify the ESP Order to remove authorization of the EICCR.

Not surprisingly, OCC's/IEU's request is outside the scope of the Court's Remand Decision, which is limited to a reconsideration, on remand of the statutory basis for recovery of the carrying costs for 2001-2008 environmental investments:

In its sixth proposition of law, OCC argues that R.C. 4928.143(B)(2) does not permit AEP to recover *certain* carrying costs associated with environmental investments. That section states, "The [electric security] plan may provide for or include, without limitation, any of the following," and then lists nine categories of cost recovery. OCC argues that this section permits plans to include *only listed* items; the commission and AEP argue that (B)(2) permits *unlisted* items. We agree with OCC. . . .

For the foregoing reasons, we reverse the commission's legal determination that R.C. 4928.143(B)(2) permits ESPs to include

unlisted items. On remand, the commission may determine whether any of the listed categories of (B)(2) authorize recovery of environmental carrying charges.

Remand Decision at ¶¶ 31, 35 (emphasis added).

In the ESP Order, the Commission addressed and approved a provision for the Companies' ESPs through which they would recover carrying costs on their incremental environmental investments made during 2009, 2010, and 2011. (ESP Opinion and Order, at pp. 28-30.) That decision was made separate and apart from the decision to approve a provision to allow for the recovery of carrying costs for their 2001-2008 incremental environmental investments. (*Id.* at pp. 24-28.) Neither IEU nor OCC sought rehearing of the Commission's decision to approve recovery of carrying costs on 2009, 2010, and 2011 incremental environmental investments. Nor did IEU or OCC party raise on appeal to the Ohio Supreme Court any claim of an error in the Commission's decision to include a provision in the Companies' ESPs that would enable them to recover carrying costs for their 2009, 2010, and 2011 environmental investments. Those parties' opportunistic attempt to do so now should be considered untimely and rejected.

The Commission's decision to permit the Companies to recover their 2009, 2010, and 2011 incremental environmental investment carrying costs became final and non-appealable back in 2009. Not surprisingly, the Court's Remand Decision does not address, let alone purport to reverse, the Commission's decision to approve that ESP provision and the charges established pursuant to that provision, which enable the Companies to recover those carrying costs. Rather, the Court's ruling in ¶ 35 of the Decision was explicitly issued in response to OCC Proposition of Law No. 6, which only challenged the non-fuel generation rate increase that was based on pre-ESP environmental investment carrying charges.

OCC's and IEU's effort now to attack that aspect of the Commission's final order approving the Companies' ESPs must be rejected. It is an improper attempt to bypass the rehearing statute, Ohio Rev. Code §4903.10, and the statute governing the filing of appeals of the Commission's final orders, Ohio Rev. Code § 4903.11.

**B. There are multiple bases in the ESP statute supporting recovery of environmental investment – even though the Commission need not revisit that issue in this case.**

As discussed above, the EICCR was not at issue in the appeal from the Commission's decision in the ESP Cases and cannot be the basis for blocking implementation of aspects of the ESP Order not at issue on appeal. Nonetheless, IEU claims (at 3) that there is no provision in the ESP statute "that facially justifies the EICCR." On a more circumspect basis, OCC argues (at 3) that the Commission must, as a threshold matter, determine whether the EICCR falls within one of the categories listed in R.C. 4928.154(B)(2). In reality, there are multiple bases in the ESP statute to support recovery of incremental environmental investment. For example, division (B)(2)(d) authorizes the Commission to establish "terms, conditions, or charges relating to ... carrying costs ..." In addition, at least two other subdivisions of ESP statute also provide a statutory basis for the environmental carrying cost charges: (B)(2)(e) (which authorizes automatic increases in any component of the standard service price) and (B)(2)(b) (an environmental expenditure for any generating facility of the electric distribution utility). Each of these three legal bases will be briefly addressed.

First, division (B)(2)(d) authorizes the Commission to establish "terms, conditions, or charges relating to ... carrying costs ..." That provision provides the Commission with an alternative basis (*i.e.*, aside from division (B)(2)'s "without

limitation” clause) to support the continued recovery of the challenged environmental carrying charge. There is no more reasonable and appropriate basis for a generation charge than carrying charges on generation-related capital investments. Because division (B)(2)(d) expressly permits recovery of carrying costs, this provision supports continued recovery of environmental carrying costs. And, per the statute, the effect of perpetuating the useful lives of existing generation assets through prudent, economic environmental investments would have the effect of stabilizing rates – especially when compared to the cost of investing in new generation.

A second equally applicable legal basis to support the recovery of environmental carrying costs is found in division (B)(2)(e) of the ESP statute. That provision authorizes automatic increases in any component of the standard service price. Allowing automatic rate increases for environmental investment carrying costs is not a new concept. Under AEP Ohio’s prior rate plan (Rate Stabilization Plan), automatic rate increases were permitted based on demonstrating that environmental investments were actually made. AEP Ohio notes in this regard that the Commission found, on page 28 of the ESP Order, that its initial decision regarding the recovery of continuing carrying costs on environmental investments “is consistent with our decision in the 07-63 Case and the RSP 4 Percent Cases.” Division (B)(2)(e)’s allowance for automatic rate increases applies here and it would be appropriate to invoke that provision as an additional legal basis for supporting the ESP order’s decision to permit a non-fuel generation rate increase to recover carrying costs for environmental investments

Another legal basis to support the recovery of environmental carrying costs is division (B)(2)(b) of the ESP statute. Division (B)(2)(b), in pertinent part, allows

inclusion in an ESP of a provision that provides cost recovery “for an environmental expenditure for an electric generating facility of the [EDU], provided the cost is incurred or the expenditure occurs on or after January 1, 2009”. The EICCR permits recovery of carrying costs for post-2008 capital environmental expenditures. Since division (B)(2)(b) allows a reasonable surcharge to recoup an environmental investment, certainly the carrying costs reflected in the ESP Order’s non-fuel generation rate increase would qualify.

In sum, there are multiple bases within the ESP statute to support the EICCR – even though the Commission need not revisit that question in this case. This type of investment is fundamental for operating utility-owned fossil-fuel generation and supports considerable economic development in Ohio. If the Commission does not support such basic cost recovery for incremental environmental investments not previously reflected in rates, then maintaining and continuing to operate existing fossil-fuel generation within the State of Ohio will simply become uneconomic for traditional investor-owned utilities.

**C. The carrying charge objections of the IEU and OCC should be rejected as being untimely and otherwise without merit.**

IEU raises concerns (at 4-7) over the application of carrying costs in this case and over the value of the carrying costs being applied to the environmental investments.

While IEU considers this case another “opportunity” to litigate (or more precisely, to re-litigate) the carrying charge applicable to the EICCR, the Commission has already heard and considered IEU’s objections in the ESP cases and again in the EICCR case. In its Finding and Order in the initial EICCR case, the Commission approved the Companies’ carrying charge proposed in the updated application (same method used to support the

current Application). In particular with respect to IEU's attempt in that case to re-litigate the carrying charge issues that it lost in the ESP Cases, the Commission stated as follows in the EICCR decision:

As part of AEP-Ohio's ESP cases, the Commission evaluated and approved each component of the carrying cost rate, including the A&G component, for the Companies' environmental investments. In the ESP case, the Commission considered and rejected the arguments presented regarding the A&G component of the carrying cost calculation and incorporating the short-term cost of debt or other special financing into the carrying cost calculation. Ultimately, in the ESP cases, the Commission concluded that using the WACC was appropriate for the environmental investments and consistent with the Commission's decision in the Companies' previous cases.

*Initial EICCR Case*, Finding and Order at 10. The Entry on Rehearing in the *EICCR Case* also reiterated (at 6) that the Commission already considered and decided the carrying charge issues. In short, IEU is improperly attempting to re-litigate an issue that has already been considered and decided.

The Company filed the current EICCR consistent with the 2009 filing, Case No. 10-155-EL-RDR. In Case No. 10-155-EL-RDR, the Commission found that the issues raised regarding the carrying cost calculation had been adequately and reasonably addressed. (Finding and Order at 10.) The compounding of carrying costs represents the Companies carrying the investment while not getting current recovery; once the recovery becomes current (for 2009 and 2010 investment current recovery under the Company's proposed application will be December, 2011) the compounding will be removed, representing current recovery.



OCC also questions (at 5-6) the Companies' proposal to collect 18 months of carrying costs in 6 months. As part of their argument the OCC calculates the percentage increase on only the EICCR rate in order to show a more drastic increase. The Companies use typical bill impacts when applying for any rate increase in order to analyze bill impacts and avoid rate shock to customers. In this filing, the overall bill increase for a residential customer using 1,000 kWh a month is a \$1.00 increase, less than 1% of the total bill. In addition, the total bill increase for all customer scenarios run in typical bill impact calculations show the resultant rate being less than 2% for the typical customer calculation. While AEP Ohio recognizes that not all customers are the same, the majority will fall into the less than 2% category, a significantly lower impact than the above 40% that OCC points out in their comments. In sum, AEP Ohio submits that this % increase is reasonable and the collection over 6 months will reduce the amount of carrying costs the customers will ultimately pay by reducing the time-frame over which the costs are collected while maintaining a reasonable increase.

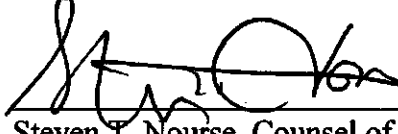
Finally, as part of its discussion of carrying charges, IEU also maintains (at 6) that the EICCR "results in no risk to the Companies due to their environmental expenditures." This is a rather incredulous statement for IEU given that it opposes AEP Ohio's recovery of environmental expenditures at every possible opportunity. Similarly, the OCC opposes AEP Ohio's environmental investment recovery even though the investment is made to keep relatively more affordable plants available to serve customers and has the effect of stabilizing rates. In any case, the 2010 environmental investment included in the Application was audited by Staff and subject to discovery by the parties and IEU does not bring to bear any particular objection or claim in this regard. Consequently, IEU's

innuendo that some unspecified environmental investment was not needed is an unsupported aspersion that should be ignored.

### **CONCLUSION**

For the foregoing reasons, the Commission should grant the Companies' Application in this case and order that the EICCR be modified accordingly.

Respectfully submitted,

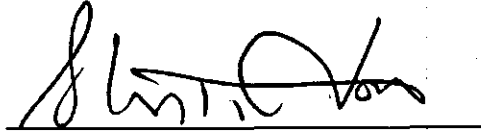
A handwritten signature in black ink, appearing to read 'Steven T. Nourse', is written over a horizontal line.

Steven T. Nourse, Counsel of Record  
Matthew J. Satterwhite  
Anne Vogel  
American Electric Power Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215-2373  
Telephone: (614) 716-1606  
Facsimile: (614) 716-2950  
[stnourse@aep.com](mailto:stnourse@aep.com)

Counsel for Columbus Southern Power  
Company and Ohio Power Co

## **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 Reply Comments  
has been served upon the below-named counsel via First Class mail, postage prepaid, this  
31<sup>st</sup> day of May, 2011.



Steven T. Nourse

William L. Wright  
Assistant Attorney General  
Public Utilities Section  
180 E. Broad Street  
Columbus, Ohio 43215

Samuel C. Randazzo  
Joseph M. Clark  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215-4228

Janine L. Migden-Ostrander  
Terry L. Etter  
Office of the Ohio Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, Ohio 43215-3485