BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	))))	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	))))))	Case No. 11-346-EL-SSO Case No. 11-348-El-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Amend their Emergency Curtailment Service Riders.	))))	Case No. 10-343-EL-ATA Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Mechanisms to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Revised Code.	))))))	Case No. 11-4920-EL-RDR Case No. 11-4921-EL-RDR

ENTRY ON REHEARING

The Commission finds:

(1) On January 27, 2011, Columbus Southern Power Company's (CSP) and Ohio Power Company's (OP) (jointly, AEP-Ohio or

the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code, in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM. This original application was for approval of an electric security plan (ESP 2) in accordance with Section 4928.143, Revised Code. As filed, AEP-Ohio's SSO application for ESP 2 would commence on January 1, 2012, and continue through May 31, 2014.

(2) On September 7, 2011, numerous parties (Signatory Parties)[1] to the proceedings filed a Joint Stipulation and Recommendation (Stipulation) proposing to resolve the issues raised in AEP-Ohio's ESP 2 cases and related matters pending before the Commission in several other AEP-Ohio cases which include: an emergency curtailment proceeding in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Cases); a request for the merger of CSP with and into OP in Case No. 10-2376-EL-UNC (Merger Case); a determination of the capacity charge that the Companies will assess on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity Charges Case); and a request for approval of a mechanism to recover deferred fuel costs and accounting treatment in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (Fuel Deferral Cases). Pursuant to entry issued September 16, 2011, the hearing in the ESP 2 case was consolidated with the above listed cases for the sole purpose of considering the Stipulation.

(3) On December 14, 2011, the Commission issued its Opinion and Order in this proceeding, finding that the Stipulation, as modified by the order, should be adopted and approved. On December 22, 2011, AEP-Ohio filed its compliance tariffs and, on December 29, 2011, AEP-Ohio filed its revised detailed

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1 The Signatory Parties to the Stipulation are: AEP-Ohio, Staff, Ohio Energy Group, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., Ohio Hospital Association (OHA), Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Company, the city of Hilliard, the city of Grove City, Association of Independent Colleges and Universities of Ohio, Exelon Generation Company, LLC, Duke Energy Retail Sales, LLC, AEP Retail Energy Partners LLC (AEP Retail), Wal-Mart Stores East, LP and Sam's East, Inc., Retail Energy Supply Association (RESA), Paulding Wind Farm II LLC, Ohio Environmental Council, Environmental Law and Policy Center , EnerNOC, Inc., Natural Resources Defense Council, and PJM Power Providers Group.

implementation plan (DIP), as modified by the Opinion and Order.

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

(5) On January 13, 2012, AEP-Ohio, Ormet Primary Aluminum Corporation (Ormet), Industrial Energy Users-Ohio (IEU-Ohio), Retail Energy Supply Association (RESA), OMA Energy Group (OMAEG), Ohio Hospital Association (OHA), FirstEnergy Solutions Corp. (FES), and the Ohio Consumers' Counsel and Appalachian Peace and Justice Network (OCC/APJN) filed applications for rehearing. Memoranda contra the various applications for rehearing were filed by the Ohio Environmental Council (OEC), FES, OCC/APJN, IEU-Ohio, OMAEG, RESA, and AEP-Ohio on January 23, 2012.

(6) On January 23, 2012, the Commission issued an entry that provided a number of clarifications regarding its December 14, 2011, Opinion and Order (Clarification Entry).

(7) By entry dated February 1, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the ESP 2 Opinion and Order.

(8) On February 10, 2012, AEP-Ohio filed an application for rehearing of the Commission's Clarification Entry, arguing among other things that the Clarification Entry exceeds the Commission's jurisdiction and violates the statutory rehearing process by expanding the Opinion and Order outside the statutory rehearing process. Further, AEP-Ohio argues the Clarification Entry is not supported by the record, forces AEP-Ohio to involuntarily provide a below-cost subsidy, and unreasonably retreats from the RPM-priced capacity set-aside limitations without an explanation. In addition, AEP-Ohio asserts that the Clarification Entry unreasonably imposes long-term obligations on AEP-Ohio while preserving the option to further modify the RPM set-aside levels in the future. Memoranda contra the application were filed by FES on February 17, 2012, IEU-Ohio on February 17, 2012, as revised

on February 21, 2012, and by Ormet and OCC/APJN on February 21, 2012. Memoranda in response to AEP-Ohio's second application for rehearing were filed by OEG and RESA on February 21, 2012.

(9) On February 17, 2012, IEU-Ohio filed an application for rehearing of the Commission's Clarification Entry, arguing the entry was unreasonable by not allowing all governmental aggregation programs that complete the necessary process by December 31, 2012, to have access to RPM-priced capacity. IEU-Ohio also asserts that the December 31, 2012, deadline to complete the government aggregation process is unreasonable. AEP-Ohio filed a memoranda contra IEU-Ohio's application for rehearing on February 21, 2012.

(10) In this Entry on Rehearing, the Commission has reviewed and considered all of the arguments on rehearing regarding the ESP 2 Order as well as the Clarification Entry. As discussed below, upon review of the applications for rehearing, the Commission has determined that the Stipulation, as a package, does not benefit ratepayers and the public interest and, thus, does not satisfy our three-part test for the consideration of stipulations. Accordingly, the Commission will reject the Stipulation. Further, the Commission notes that any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission but are moot in light of our rejection of the Stipulation for the reasons stated below.

(11) FES alleges the Commission unreasonably failed to modify the Stipulation to impose specific conditions on the Companies' corporate separation and subsequent pool termination. FES proposes that the Commission require AEP-Ohio to provide more detail regarding what it expects from AEP-Ohio in future proceedings involving corporate separation and pool termination. FES also requests that the Commission require AEP-Ohio to provide all details in the corporate separation case regarding the corporate separation plan, including the fair market and book value, and an explanation of how fair market value was determined, for of all property that will be transferred. FES suggests the commission impose a penalty in the event that AEP-Ohio fails to achieve corporate separation and should encourage AEP-Ohio to be more diligent in

completing its corporate separation and pool termination. IEU-Ohio believes the Commission's generation asset divestiture is unlawful in that the transfer of generation assets was prematurely approved without determining that the requirements contained in Section 4928.17, Revised Code, were met.

(12) AEP-Ohio responds that the proposed modifications would add additional confusion to the corporate separation issue, and would take an extensive amount of time.

(13) In its application for rehearing, AEP-Ohio argues that the Commission's corporate separation modification is unlawful and unreasonable in that it applies Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C., in an inconsistent manner with the corporate separation approved by the Commission in the Duke ESP proceeding. AEP-Ohio claims the Opinion and Order had discriminatory impact on AEP-Ohio. As a result, AEP-Ohio argues that the modification violates state policy of ensuring effective competition under Sections 4928.17, 4928.06, and 4928.02(H), Revised Code.

(14) FES challenges AEP-Ohio's arguments, noting the Signatory Parties provided no details on the generation asset transfer, and the Commission properly determined that additional time was necessary. FES notes that while AEP-Ohio claims it is receiving discriminatory treatment as compared to the Commission's ruling on Duke's corporate separation, the Stipulations in the Duke ESP case and this case are materially different, as evidenced by the extensive amount of detail Duke provided in its stipulation as compared to AEP-Ohio's Stipulation.

OCC/APJN also oppose AEP-Ohio's request for rehearing, explaining that the Commission's decision to take additional time was reasonable and in compliance with its statutory obligations. OCC/APJN contend that AEP-Ohio's arguments about inconsistent treatment are not ripe for Commission consideration. Further, even if the arguments were ripe for consideration, OCC/APJN point out that the Commission is not statutorily obligated to handle each corporate separation application in the same manner.

IEU-Ohio explains that the differences between the Duke and AEP-Ohio stipulations do not support AEP-Ohio's assertion that corporate separation should be approved through rehearing. IEU-Ohio points out that the Duke proceeding was resolved through an unopposed ESP stipulation, while this proceeding was contested, as were the waiver requests filed by AEP-Ohio. Further, IEU-Ohio states that the Companies have failed to demonstrate how the Commission's decision to provide further review of the corporate separation will injure the public interest, and assert that it unnecessary for the Commission to rush its judgment on the corporate separation proceedings.

(15) In approving the generation asset divestiture pursuant to Section 4928.17(E), Revised Code, the Commission authorized AEP-Ohio to divest its generation assets from its noncompetitive electric distribution utility (EDU) to a separate competitive retail generation subsidiary (AEP GenCo) and directed AEP-Ohio to notify PJM that the utility intends to enter its auction process for the delivery year 2015. However, as FES correctly points out in its application for rehearing, there is significant uncertainty regarding AEP-Ohio's plan to divest its generation assets, as evidenced by AEP-Ohio's recent filings with the Federal Energy Regulation Commission (FERC)[2] and conflicting interpretations of the Stipulation contained in the record. Because of the contradictory testimony and FERC filings of what AEP-Ohio's responsibilities were in its generation asset divestiture, we grant FES's application for rehearing.

The Stipulation provides that upon the Commission's approval of full legal corporate separation, AEP-Ohio's transmission and distribution assets will be held by the EDU, while any generation resource rider (GRR) assets will also remain with the EDU. Regarding the transfer of generation assets, AEP-Ohio's generation, fuel, and other assets would be transferred to AEP GenCo. This transfer of generation assets includes AEP-Ohio's existing generating units and contractual

2 On February 10, 2012, AEP-Ohio and other AEP operating companies made filings with FERC regarding corporate separation and the generation asset divestiture in docket numbers: EC12-71; EC12-70; EC12-69; ER12-1041, ER12-1047, 1048, 1049; ER12-1042,1043,1044, 1045, and 1046 . The Commission hereby takes administrative notice of those filings.

entitlements, as well as renewable energy purchase agreements, existing fuel-related assets and contracts, and other assets related to the generation business. (See Joint Ex. 1 at 11, AEP-Ohio Exhibit 7 at PJN-1)[3]. However, at the hearing, AEP witness Nelson testified that the Companies had not determined which of AEP-Ohio's existing generation assets would be bid into the RPM base residual auction. He further claimed that, while the first step would be to transfer all generation assets to AEP GenCo, there were numerous subsequent possibilities, including transferring a plant to an AEP affiliate to shore up their reserve margin or transferring the generation to a third party. In addition, Mr. Nelson explained that AEP-Ohio did not know whether all of its generating units, once transferred, would be bid into the base residual auction (Tr. V. at 690, 697-699, 751).

We note that, Mr. Nelson's testimony was presented under unique circumstances which undermine its credibility. On September 29, 2011, AEP-Ohio filed an expedited request and motion to substitute the testimony of its original witness, Richard Munczinski, with Mr. Nelson's testimony, due to an unforeseen conflict. While the substance and content between both sets of direct testimony were the same, on cross-examination Mr. Nelson testified that Mr. Munczinski was his "boss" at AEP Service Corporation, and that he had no role in the preparation of the direct testimony he was adopting (Tr. V at 681-682). Further, Mr. Nelson's testimony is inconsistent with Attachment PJN-1 to his direct testimony, which confirms that all of AEP-Ohio's existing generating units and contractual entitlements as referenced in Exhibit WAA-1 would be transferred to a newly-created AEP generation affiliate (AEP-Ohio Ex. 4). Moreover, Mr. Nelson speculated on cross-examination that there were many options available to AEP-Ohio for the disposition of its generation assets and claimed that the ultimate disposition of AEP-Ohio's generation assets was an "open question."

Mr. Nelson's testimony is contradicted by the testimony of two other Signatory Parties' witnesses. RESA witness Ringenbach

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3 In AEP-Ohio Ex. 7, Mr. Nelson states that the detailed description of the generation asset divestiture is contained in exhibit REM-1, however the attached exhibit is labeled as PJN-1, which Mr. Nelson corrected on the record (Tr. V. 675-676).

testified that the "[s]tipulation calls for AEP-Ohio to provide notice to PJM by March of 2012, that it intends to end its term as a Fixed Resource Requirement (FRR) entity and bid all of its load into the next base residual auction under the RPM construct," (RESA Ex. 1 at 6). Similarly, on cross-examination, Constellation witness Fein affirmed that AEP GenCo would be required to bid all the generation it owns into the RPM base residual auction (Tr. VI at 977).

The Commission's intent in approving the generation asset divestiture was based on our understanding that AEP-Ohio would place all of its current (as of September 7, 2011) generation assets into the 2015 base residual auction, pursuant to the plain language of the Stipulation. Our intent is supported by not only the language within the Stipulation but also the testimony of two of the Signatory Parties' primary witnesses. However, AEP-Ohio's FERC filing is inconsistent with the intent of the Commission in that it fails to ensure that all generation assets currently owned by AEP-Ohio will be bid into the upcoming base residual auction.

Based upon the contradictory testimony presented by the Signatory Parties' witnesses, AEP-Ohio's witness Nelson's claim that the ultimate disposition of AEP-Ohio's generation assets was an "open question," and the fact that AEP-Ohio's FERC filing regarding divestiture is inconsistent with the Commission's intent in approving the Stipulation, the Commission finds that there are fundamental disagreements regarding important issues allegedly resolved by the Stipulation. The resolution of these issues is critical to the underlying question of whether the Stipulation benefits ratepayers and the public interest; therefore, we find, upon review of the record of this proceeding, that the Signatory Parties have not met their burden of demonstrating that the Stipulation, as a package, benefits ratepayers and the public interest as required by the second prong of our three-part test for the consideration of stipulations. Accordingly, we must reject the Stipulation. Therefore, the Commission's approval of AEP-Ohio's generation asset divestiture pursuant to Section 4928.17(E), Revised Code, is revoked.

(16) IEU-Ohio contends that the market transition rider (MTR) does not satisfy the requirements contained within Section

4928.143(B)(2)(d), Revised Code, as the Companies did not meet their burden of showing the MTR would have the effect of stabilizing or providing rate certainty for retail electric service. IEU-Ohio claims the MTR distorts purchasing decisions of customers by lowering rates of customers more likely to shop, and raising rates for customers less likely to shop, in direct violation of state policy. Further, IEU-Ohio argues that because the MTR is being collected though a non-bypassable charge, it is essentially a generation charge that is being collected as a distribution charge. IEU-Ohio further opines that the Commission's order is unlawful and unreasonable in that AEP-Ohio will receive an additional $24 million in revenue from the MTR without any evidence to support it, in violation of Section 4903.09, Revised Code, and fails to follow Commission precedent which requires cost-justification for generation rate increases.

FES states that, even if the MTR provides rate certainty and stability to AEP-Ohio customers, the MTR is still not justified as a non-bypassable rider, and there was insufficient evidence in the record to support the MTR. In addition, FES claims that there is no statutory basis to permit AEP-Ohio to receive an additional $24 million in MTR revenues for 2012.

OMAEG argues in that the Commission's Order modified the shopping credit provision in a way that unreasonably fails to maximize the benefits available to GS-2 customers. In its request to further review the GS-2 shopping credit provision, OMAEG raises concerns that while some GS-2 customers may already be shopping, many may realize significant and unavoidable price increases. OMAEG recommends that along with the Commission's expansion of the shopping credit to GS-2 customers, any unused portions of the credit should be given to GS-2 customers who are currently shopping and have had distribution rate increases of thirty percent or more. OMAEG opines that it is in the public interest to allow the unused portion to be accessed by GS-2 customers with notable increases as opposed to just rolling the GS-2 credit over into the next year. OMAEG claims this will also mitigate the impact of the rate increases to the GS-2 customers and provide the necessary rate stability to ensure business retention in Ohio.

(17) AEP-Ohio responds to IEU-Ohio, and FES, stating that the MTR is a rate design tool that is a valuable part of the Stipulation for customers by facilitating the transition from current generation rates to the market-based SSO generation service rates. AEP-Ohio asserts that IEU-Ohio's argument that the MTR is effectively a distribution charge because it is non-bypassable is flawed. AEP-Ohio argues that the MTR is clearly a generation related charge that the Commission may adopt pursuant to Section 4928.143(B)(2)(d), Revised Code. Further, AEP-Ohio argues there is more than sufficient evidence in the record to support the MTR. Specifically, AEP-Ohio points to AEP-Ohio witness Roush's testimony explaining the MTR was designed to limit changes in rates for all customer classes.

(18) In its application for rehearing on the Commission's clarification entry, AEP-Ohio raises similar proposals to OMAEG's suggestion to re-allocate the GS-2 shopping credit, as well as other alternatives to address any rate increases for GS-2 customers. In addition to expanding eligibility for the shopping credit as OMAEG proposed, AEP-Ohio raises the possibility of earmarking funds within the Ohio Growth Fund (OGF) to mitigate the impact on the GS-2 customer rate increase. AEP-Ohio also suggests the creation of a revenue neutral phase-in of the GS-2 load factor provision (LFP) demand charge, such that the GS-2 LFP demand charge is 25 percent of the approved non-bypassable demand charge of $3.29/kW in 2012, 50 percent in 2013, 75 percent in 2014, and 100 percent in 2015. AEP-Ohio suggests that the phase-in of the GS-2 LFP be offset by a commensurate reduction to the GS-3 and GS-4 customers LFP energy credit.

(19) The Commission finds that rehearing should be granted with respect to the assignments of error raised by IEU-Ohio and FES. Upon review of the record of this proceeding, we find that the Signatory Parties have not demonstrated that the MTR and LFP provisions of the Stipulation promote rate certainty and stability as required by Section 4928.143.(B)(2)(d), Revised Code. We further find that the Signatory Parties have not demonstrated these provisions benefit ratepayers and the public interest as required by the second prong of our three part test for the consideration of stipulations.

At the hearing, AEP-Ohio presented testimony regarding the rate impacts of the Stipulation upon customers, including small commercial customers in the GS-2 class (AEP-Ohio Ex. 2, Exhibit DMR-5). In the Opinion and Order, the Commission recognized that these rate impacts may be significant, based upon evidence indicating that total bill impacts may, in some cases, approach 30 percent. However, the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts to be felt by customers, particularly with respect to low load factor customers who have low usage but high demand.

Due to the evidence that some commercial customers were going to receive significant total bill increases in approaching 30 percent, we modified the shopping credits provision to provide additional relief to GS-2 customers in the form of an additional allocation of shopping credits to new shopping customers. However, the actual impacts suffered by a significant number of GS-2 customers appear to have vastly exceeded AEP-Ohio's representations at hearing. Since we issued the Opinion and Order, numerous customers have filed, in the case record of this proceeding, actual bills containing total bill rate increases disproportionately higher than the 30 percent predicted by AEP-Ohio. The disproportionate rate impacts indicated by these bills undermine the evidence presented by the signatory parties that the MTR and LFP provide rate certainty and stability pursuant to Section 4928.143(B)(2)(d), Revised Code. We note that the parties seeking rehearing acknowledge that customers in the GS-2 class have received significant total bill rate increases and that it is appropriate to provide relief to these customers. However, the Commission is not persuaded that the actual total bill impacts inherent in the MTR and the LFP can be cured by a phase-in of the LFP or an additional allocation of shopping credits as recommended by AEP-Ohio. We find that the Signatory Parties have not met their burden of proof of demonstrating that the MTR and LFP provisions meet the statutory requirement of Section 4928.143(B)(2)(d), Revised Code, to provide rate certainty and stability, and that Signatory Parties have not demonstrated that the MTR and LFP benefit ratepayers and the public interest. Accordingly, pursuant to our three-part test for the consideration of stipulations, we must reject the Stipulation.

(20) In this Entry on Rehearing, the Commission has determined, on two independent grounds, that the Stipulation submitted by the Signatory Parties does not benefit ratepayers and the public interest. Thus, we find that the Stipulation must be rejected and the application, as modified by the Stipulation, must be disapproved. Section 4928.143(C)(2)(b), Revised Code, provides that:

> If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or Section 4928.142, Revised Code, respectively.

Therefore, we direct AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan, including but not limited to the base generation rates as approved in ESP I, along with the current uncapped fuel costs and the environmental investment carry cost rider set at the 2011 level, as well as modifications to those rates for credits for amounts fully refunded to customers, such as the significantly excessive earnings test (SEET) credit, and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.

(21) According to the Stipulation, in the event that the Stipulation is materially modified or rejected by the Commission, this proceeding shall go forward at the procedural point at which the Stipulation was filed; therefore, AEP-Ohio should be provided an opportunity to modify or withdraw its original application for an ESP filed in this proceeding. AEP-Ohio is directed to file a notice in this docket within 30 days stating whether it is prepared to proceed on its application as filed or whether it intends to modify or withdraw such application.

Further, the attorney examiners are directed to establish a new procedural schedule consistent with AEP-Ohio's notice along with a new intervention deadline to enable interested persons who had not previously participated in this proceeding to intervene. In addition, in light of our rejection of the Stipulation, the attorney examiners are directed to establish a procedural schedule in the Capacity Charge Case.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio and FES be granted, in part, and denied, in part. Further, the applications for rehearing filed by AEP-Ohio, Ormet, OCC/APJN, RESA, OHA, and OMAEG be denied. It is, further,

ORDERED, That the Companies shall file proposed tariffs consistent with this order by February 28, 2012. It is, further,

ORDERED, That a copy of this entry on rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

GAP/JJT/GNS/vrm

Entered in the Journal

FEB 23 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary