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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company	)))	Case No. 09-872-EL-FAC Case No. 09-873-EL-FAC

OHIO POWER COMPANY'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING OF INDUSTRIAL ENERGY USERS – OHIO AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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MEMORANDUM CONTRA

In their respective applications for rehearing ("AFRs"), Industrial Energy Users – Ohio ("IEU") and the Office of the Ohio Consumers' Counsel ("OCC") argue that the Commission's January 23, 2012 Opinion and Order does not go far enough to capture all the benefits, as well as any potential future benefit, with interest, derived from the 2008 Buyout Agreement and the 2008 Contract Support Agreement entered into on behalf of Ohio Power Company (the "Company" or "OPCo"). It would be unreasonable and unlawful for the Commission to acquiesce to their demand to claw back or claw forward even more of the benefit – or more accurately the unknown potential benefit – of these 2008 transactions to reduce the fuel expense under-recovery that otherwise would be recoverable from customers through OPCo's fuel adjustment clause ("FAC") phase-in recovery rider ("PIRR") as previously ordered by the Commission in the OPCo's 2008 Electric Security Plan, Case No. 08-918-El-SSO, Opinion and Order, at 13-24 (March 18, 2009) (the "ESP I Case" or "ESP I Order"). Their requests should be denied primarily for the same reasons, set forth in OPCo's February 22, 2012 Application for Rehearing, why it was unlawful and unreasonable for the Commission to order that *any* additional value the Company realized from the 2008 Buyout Agreement should be credited against its FAC under-recovery. They should also be denied to the extent they raise no new argument and would result in creating an even greater retroactive windfall for the customers in violation of the ESP I Order.

A. The Commission properly refused to credit any value that may yet be seen as a result of the 2008 Contract Support Agreement against OPCo's FAC under-recovery.

Both IEU and OCC argue that the Commission erred in failing to order OPCo to immediately credit against its FAC deferral benefits it will receive in the future from the 2008

Contract for Support. See Opinion and Order at 14; IEU AFR at 12, OCC AFR at 11. The Commission fully considered and rejected this argument and IEU and OCC offer no new argument in support of their position. The Commission should again reject their position.

As the Company explained in its February 22, 2012 Application for Rehearing at 34, it would be unreasonable and unlawful for the Commission to consider the 2008 Contract for Support Agreement for the purpose of adjusting FAC deferrals at this time or at any time in the future, because:

> it would involve selective and unlawful retroactive ratemaking; it would unlawfully use the results of fuel procurement activities related to 2008 and use them to offset fuel costs prudently incurred in subsequent periods; it would unlawfully modify the FAC baseline that was fully litigated and decided in the ESP Cases; it would unlawfully impair agreements that OPCO prudently entered into in 2008; and it would unreasonably and unlawfully ignore the 2008 Production Bonus Agreement that increased fuel costs in 2008.

The Commission should reject the Intevernors' applications for rehearing on this issue for the reasons already presented in OPCo's own Application for Rehearing, but alternatively, it should reject Intervenors' position for the additional reason the Commission noted in its Opinion and Order, at 14. Any benefit OPCo may receive will not ripen until the Company exercises its *option* to take the discounted pricing and will apply to time periods outside the current audit.

OCC argues that the Company should be ordered to "immediately credit customers with the fair market value of the coal market price discount option" (OCC's AFR at 12) and IEU argues the Commission should "assign a net present value to the portion of the option that will be realized after May 31, 2015" and reduce the FAC deferral balance by that amount (IEU's AFR at 13). Both these proposals are unlawful because they violate and collaterally attack the ESP I Order which determined that the FAC would be limited to the term of the ESP (2009-2011), which excludes both the post-ESP period as well as the pre-ESP period. See OPCo's AFR at 20-

29. The proposals by IEU and OCC also are unreasonable in light of the fact that OPCo may never actually realize the full benefit from the option to buy coal at a market discount because, for any number of reasons, (e.g., the coal tonnage may not be needed), the option may not be fully exercised. To the extent that there is an FAC in existence, a decision regarding whether customers should reap the corresponding benefit of the market discount can be addressed when the benefit is realized.

B. The Commission should not compound its error in ordering OPCo to credit the "realized value" from the Buyout Agreement against its FAC under-recovery by also ordering the removal of carrying charges on the deferrals or the payment of interest on the amount to be credited.

In their respective applications for rehearing, IEU and OCC further argue that the Commission did not go far enough in capturing the benefits of the 2008 Buyout Agreement to reduce the 2009 FAC deferrals. IEU argues that the Commission should further augment the amount to be credited by removing the carrying charges that accrued on what it alleges were "improperly booked" deferrals. (IEU AFR at 9.) OCC comes at the issue a bit differently. It argues that the Commission should further augment the amount to be credited by charging OPCo "interest" on the lump sum payment and the value of the coal reserve, as if the customers had loaned these sums to the Company for its use. (OCC AFR at 8.) Both proposals should be denied as unlawful, for the same reasons it was unlawful for the Commission to order credits against 2009 fuel costs for the underlying cash payments and coal reserve asset OPCo received in 2008. The award of interest or the reduction of carrying charges credits, just as the credits themselves, constitute unlawful retroactive ratemaking, as discussed in OPCo' Application for Rehearing, at 16, and an unlawful modification of the Commission's ESP I Order, as discussed in OPCo's Application for Rehearing, at 20.

Intervenors' argument that there should be symmetrical treatment with respect to the over-recovery and under-recovery of FAC expense is not reasonable or appropriate in this context. This is not the typical true-up situation. Here the customers are paying the actual fuel expenses the Company has incurred and the actual cost of deferring recovery of those expenses, as determined in the ESP I Order. There has been no determination that the FAC deferrals were unlawful or unreasonable. The customers have not over-paid and the Company has not over-recovered its FAC expenses. What has happened here is that the Commission has selectively seized assets that accrued to the Company as a result of a contract modification, prudently undertaken in 2008, a pre-ESP year, to reduce the customer's existing obligation to pay actual fuel expenses and deferrals incurred during the ESP period. As more fully explained in OPCo's Application for Rehearing at 31-32, the Commission has ordered this seizure to occur absent any consideration whether the Company's alleged gains from the 2008 transaction were offset by corresponding fuel expense increases in 2008 incurred by the Company as a result of other contract support circumstances. Indeed, the payments made in 2008 by OPCo as a result of the 2008 Production Bonus Agreement evidences that there, in fact, were fuel cost increases in 2008 that offset the benefits OPCo obtained, in 2008, from the 2008 Buyout Agreement.

While IEU argues "equity" requires that this opportunistic windfall to the customers be further augmented by a reduction in carrying charges, there is no equity in the underlying credit and there is no equity in reducing carrying charges (or, in OCC's view, of adding interest charges) to further under-recover the Company's actual FAC expenses in 2009.

C. It would be unreasonable or imprudent to immediately reduce the Phase-In Recovery Rider.

IEU and OCC argue that the Commission should amend its order to direct the Company to immediately reduce the PIRR to reflect the flow through of the full value of the 2008 Buyout

Agreement. An immediate reduction to the PIRR would be unreasonable because of the significant questions affecting the lawfulness of the Order. If the Commission would order an immediate credit, and that credit should be found to be unlawful for one or more of the reasons noted in the Company's Application for Rehearing, OPCo's customers will needlessly suffer excessive volatility in their rates and, similarly, OPCo in its revenues.

In addition, it is impossible to immediately reduce the PIRR to reflect the potential value of the West Virginia coal reserve as the value of that reserve is an unknown. As OPCo explains in its Application for Rehearing at 14, if the Commission is going to seize the value of the coal reserve asset over the Company's objections, it should be done through a sale of the asset – not by conducting an appraisal or estimating a hypothetical value. The only way to determine accurately the actual value of the coal reserve asset is to sell it.

OCC's argument that there should be an immediate credit of $41 million to reflect the current book value of the reserve is particularly imprudent. Until such time as the reserve is sold, there is no reason to assume that the book value recorded in 2008 will be the "realized value." The realized value, in fact, could be less than the $41 million depending on the market value at the time of sale.

Moreover, the arguments that Intervenors make to support an immediate reduction in the PIRR to reflect the full amount of the credit are tied to the Commission's December 14, 2011 Opinion and Order in Case No. 11-346-EL-SSO, an order that has been effectively vacated by the Commission's February 23, 2012 Entry on Rehearing. Their arguments fail to account for the fact that the PIRR going forward will not be the PIRR approved in the December 14, 2011 Order.

D. The Commission should reject the Intervenor's demand that it select and direct an independent "auditor" to value the West Virginia Coal Reserve.

In its own Application for Rehearing OPCo explains why the Commission should modify its Order to allow the value of the West Virginia coal reserve to be determined by means of a sale of the asset after a final, non-appealable decision is reached in this case. The only way to determine the actual "realized value" of the coal reserve asset, as the Commission seeks to do, is to sell it. See OPCo's Application for Rehearing, at 14-16.

While the Company disagrees that it is appropriate to value the coal reserve by means of any appraisal instead of a sale, the Commission should not compound its error in limiting the valuation of the asset for purpose of its confiscation in this proceeding to a hypothetical appraisal, by taking it upon itself to select and direct an auditor to accomplish this purpose. As OPCo explains in its own Application for Rehearing, at 32-34, the asset is a Company-owned asset; the ratepayers have no claim on it. The Company, therefore, should be allowed to direct the sale of the asset, and to direct any steps necessary to accomplish that sale.

CONCLUSION

For the reasons more fully set forth in the Company's own Application for Rehearing and provided above, the Applications for Rehearing of IEU and OCC should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of AEP Ohio's Memorandum Contra Application for Rehearing was served on the persons stated below via electronic mail this 2nd day of March, 2012.

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