

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	Case Nos. 11-346-EL-SSO
Ohio Power Company for Authority to	)	11-348-EL-SSO
Establish a Standard Service Offer	)	
Pursuant to §4928.143, Ohio Rev. Code,	)	
In the form of an Electric Security Plan.	)	
	)	
	)	
In the Matter of the Application of	)	
Columbus Southern Power Company and	)	Case Nos. 11-349-EL-AAM
Ohio Power Company for Approval of	)	11-350-EL-AAM
Certain Accounting Authority.	)	
	)	

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**REPLY BRIEF OF  
THE NATURAL RESOURCES DEFENSE COUNCIL AND OHIO  
ENVIRONMENTAL COUNCIL**

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**I. INTRODUCTION**

On March 30, 2012, The American Electric Power Company (“AEP” or “Company”) submitted a modified Electric Security Plan (“ESP”). An extensive hearing process was conducted. The Natural Resources Defense Council (“NRDC”) and the Ohio Environmental Council (“OEC”) jointly filed an Initial Post Hearing Brief in support of the Generation Resource Rider (“Rider GRR”) and applicability of that Rider to the Turning Point Solar project. NRDC and the OEC also supported the Timber Road Wind Renewable Energy Purchase Agreement (“REPA”). The issues in this filing are limited to the Generation Resource Rider and the undersigned again request the GRR Rider be approved with modifications previously noted.

**II. The Generation Resource Rider set at a value of zero, is consistent with §4928.143(B)(2) and does not violate any important regulatory principles or practices.**

RC §4928.143 spells out the requirements for approval of electric security plans (“ESP”). RC §4928.143(B)(2)(b) and (c) allow for recovery of construction costs via a nonbypassable surcharge for the life of the facility when certain criteria are met. The use of the GRR as a placeholder affords the Commission, as well as the parties, the opportunity at appropriate subsequent proceedings to fully evaluate whether AEP satisfies all of the criteria necessary to establish appropriate cost recovery and surcharges, including whether sufficient need exists. In addition, as will be demonstrated below, other electric utilities have utilized placeholders set a zero and they have been approved by the Commission. Therefore, the GRR placeholder is reasonable and lawful.

As stated throughout these proceedings, the GRR shall act as a placeholder with a value of zero only until such time as the Commission approves any project-specific costs to be included in the GRR. No value has been assigned to any of these riders and the parties have retained their rights to advocate in support of or in opposition to the riders in subsequent proceedings. Absolutely no arguments have been waived. Therefore, the GRR placeholder results in no harm or prejudice to any of the parties. In addition, without the use of the placeholder, the Commission has no means by which to evaluate the merits of the Turning Point. Therefore, the failure to adopt the GRR as a placeholder, results in harm and prejudice to AEP; not to opposing parties.

It is totally within the purview of the Commission to determine whether the GRR placeholders are consistent with §RC 4928.143(B)(2) and in this case the Commission was correct when it determined the placeholders set at zero were proper. In fact there is precedent before the Commission for the use of such placeholders when set at zero. The Commission has accepted such placeholders in previous proceedings for AEP Ohio, Duke Energy-Ohio and the First Energy operating companies. In the March 30, 2009 Entry in Case Nos. 08-917 and 08-918 EL-SSO, the Commission approved AEP Ohio's Compliance Tariffs which included the Economic Development Rider with a value of zero and an Energy Efficiency and Peak Demand Reduction Rider set at zero; and in a March 18, 2009 O&O, it approved the Environmental Investment Carrying Charge Rider without a set rate. Also in Duke Energy-Ohio's initial ESP, Case No. 08-920-EL-SSO, et al., the commission approved Rider DR-IM to be set at zero subject to periodic adjustments. In fact, First Energy utilized a similar mechanism with a zero value in its first ESP case (Case No. 08-935-EL-SSO.) With such precedent utilized by the Commission, it is disingenuous at best for parties to argue the use of a placeholder as unlawful.

In further support of the concept of the GRR as a placeholder, the undersigned note: the GRR advances SB 221 requirements that allow for recovery of EDU-owned or operated generation facilities; any charges approved under the GRR must comply with §RC 4928.143(B)(2)(b) and (c) as determined by the Commission; the GRR is necessary and beneficial in pursuing the development of the Turning Point project; and finally, all parties reserved their rights to debate and argue the merits, including the need for additional generation capacity in future proceedings. As such the GRR as a placeholder

set at zero is reasonable, lawful and does not violate any important regulatory principles or practices.

As stated previously placeholders for the GRR set at zero are reasonable and lawful especially when one recognizes no prejudice will result. When seeking authorization from the Commission for cost recovery through the GRR, AEP must demonstrate how the proposed project satisfies all applicable requirements set forth in §RC 4928.143(B)(2)(b) and (c), including that of necessity. In earlier proceedings, the Commission explicitly noted, "... in permitting the creation of the GRR, it is not authorizing the recovery of any costs for the Companies but is allowing for the establishment of a placeholder mechanism and ... any recovery under the GRR must be authorized by the Commission. The Commission cannot and will not approve any recovery unless the Companies meet their burden set forth in §RC 4928.143(B)(2).” (See O&O, December 14, 2011 at 39.) The Commission further reiterated that none of the Signatory Parties are obligated to take a position in support or opposition to any potential nonbypassable charges by sponsoring the Stipulation. *Id.* All parties have reserved their rights to debate and argue those issues in future proceedings, therefore, no parties shall be prejudiced. Even though these comments were made before the Commission reversed its approval of the Stipulation, the Commission’s reversal was not based in any part on the GRR. Therefore, the message conveyed by the Commission should still stand.

**2) AEP Ohio may demonstrate in a separate proceeding that the Turning Point project is necessary under §RC 4928.143(B)(2)(c) if it is needed by AEP Ohio to comply with the solar benchmarks in §RC 4928.64.**

Generation projects funded by the GRR, or any other surcharge authorized by §RC 4928.143(B)(2), must satisfy all necessary criteria while advancing the policy provisions contained in §RC 4928.02, and the statutory mandates contained in §RC 4928.64. The burden of satisfying all criteria lies with AEP Ohio and the GRR placeholder affords all parties the opportunity to support or oppose these issues in future proceedings.

In addition, the Commission has the authority to make findings in the most efficient manner. The Supreme Court has recognized the broad discretion of the Commission in managing its dockets to avoid undue delay and duplication of effort. §4901.13, *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St. 2d 367, 379. “It is well settled that pursuant to R.C. 4901.13, the Commission has the discretion to decide, how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort.” *Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 559, 560. The argument that the commission cannot acknowledge the Turning Point project via a placeholder in the ESP is not well founded. As stated previously, if the Commission was not able to utilize a placeholder, it would be deprived of considering these projects in future proceedings.

### **III. Conclusion:**

The Commission should approve the Generation Resource Rider (“GRR”) as proposed by AEP-Ohio, with certain modifications as recommended by NRDC and other parties as previously noted.<sup>1</sup> The use of the GRR as a placeholder is proper within the

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<sup>1</sup> These modifications include limiting the applicability of the GRR to only renewable and alternative energy projects, or certain qualified energy efficiency projects.<sup>1</sup> The second modification would require the Company to develop a crediting system to ensure that shopping customers do not pay twice for renewable energy.

context of §4928.143(B)(2) and the Commission will be acting within its authority if it approves the use of such placeholders. In addition, the Commission has the authority to manage its dockets in a manner that promotes efficiency and reduces duplication of efforts. Therefore, the use of the GRR as a placeholder at this juncture is proper.

Respectfully submitted,

/s/Cathryn N. Loucas

Trent A. Dougherty

Cathryn N. Loucas

The Ohio Environmental Council

1207 Grandview Avenue, Suite 201

Columbus, OH 43212

[Trent@theoec.org](mailto:Trent@theoec.org)

[Cathy@theoec.org](mailto:Cathy@theoec.org)

**Attorneys for the Ohio Environmental Council**

/s/ Christopher J. Allwein

Christopher J. Allwein

Williams Allwein & Moser, LLC

1373 Grandview Ave. Suite 212

Columbus, OH 43212

Phone (614) 429-3092

[callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)

**Attorney for the Natural Resources Defense Council**

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Reply Brief by the Natural Resources Defense Council and the Ohio Environmental Council* was served upon the persons listed below via electronic mail on this 9th day of July, 2012.

/s/ Cathryn N. Loucas  
Cathryn N. Loucas

## **SERVICE LIST**

[aehaedt@jonesday.com](mailto:aehaedt@jonesday.com)  
[ahague@szd.com](mailto:ahague@szd.com)  
[barthroyer@aol.com](mailto:barthroyer@aol.com)  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[cmontgomery@bricker.com](mailto:cmontgomery@bricker.com)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)  
[cynthia.brady@constellation.com](mailto:cynthia.brady@constellation.com)  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)  
[david.fein@constellation.com](mailto:david.fein@constellation.com)  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[dconway@porterwright.com](mailto:dconway@porterwright.com)  
[dorothy.corbett@duke-energy.com](mailto:dorothy.corbett@duke-energy.com)  
[doug.bonner@snrdenton.com](mailto:doug.bonner@snrdenton.com)  
[emma.hand@snrdenton.com](mailto:emma.hand@snrdenton.com)  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[gary.a.jeffries@aol.com](mailto:gary.a.jeffries@aol.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[gthomas@gtpowergroup.com](mailto:gthomas@gtpowergroup.com)  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)  
[jedjadwin@aep.com](mailto:jedjadwin@aep.com)  
[sandy.grace@exeloncorp.com](mailto:sandy.grace@exeloncorp.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)  
[stephen.chriss@wal-mart.com](mailto:stephen.chriss@wal-mart.com)

[jesse.rodriquez@exeloncorp.com](mailto:jesse.rodriquez@exeloncorp.com)  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[jmaskovyak@ohiopoverlylaw.org](mailto:jmaskovyak@ohiopoverlylaw.org)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)  
[keith.nusbaum@snrdenton.com](mailto:keith.nusbaum@snrdenton.com)  
[laurac@chappellconsulting.net](mailto:laurac@chappellconsulting.net)  
[lmcalister@bricker.com](mailto:lmcalister@bricker.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)  
[malina@wexlerwalker.com](mailto:malina@wexlerwalker.com)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[msmalz@ohiopoverlylaw.org](mailto:msmalz@ohiopoverlylaw.org)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)  
[myurick@cwslaw.com](mailto:myurick@cwslaw.com)  
[nolan@theoec.org](mailto:nolan@theoec.org)  
[pfox@szd.com](mailto:pfox@szd.com)  
[Phillip.sineneng@thompsonhine.com](mailto:Phillip.sineneng@thompsonhine.com)  
[ricks@ohanet.com](mailto:ricks@ohanet.com)  
[sam@mcwncmh.com](mailto:sam@mcwncmh.com)  
[trent@theoec.org](mailto:trent@theoec.org)

[stnourse@aep.com](mailto:stnourse@aep.com)



[tallexander@calfee.com](mailto:tallexander@calfee.com)

[tobrien@bricker.com](mailto:tobrien@bricker.com)

[todonnell@bricker.com](mailto:todonnell@bricker.com)

[wmassey@cov.com](mailto:wmassey@cov.com)

[kpkreider@kmklaw.com](mailto:kpkreider@kmklaw.com)

[sfisk@nrdc.org](mailto:sfisk@nrdc.org)

[william.wright@puc.state.oh.us](mailto:william.wright@puc.state.oh.us)

[Werner.Margard@puc.state.oh.us](mailto:Werner.Margard@puc.state.oh.us)

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Summary: Brief Reply Brief by Natural Resources Defense Council and Ohio Environmental Council. electronically filed by Ms. Cathryn N. Loucas on behalf of The Ohio Environmental Council