BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	)))))	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	)))))	Case No. 11-4921-EL-RDR

MOTION TO STAY AEP OHIO'S COLLECTION OF PHASE-IN RECOVERY RIDER RATES FROM CUSTOMERS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 1.2 million residential consumers of Columbus Southern Power Company ("CSP") and Ohio Power ("OP") (collectively, "AEP Ohio" or "Companies"), files this pleading to protect AEP Ohio's customers. Customers need protection from paying excessive rates for electric service. Additionally, this pleading seeks to preserve a remedy for the unjust collection of certain deferred fuel costs from the Companies' first Electric Security Plan ("ESP").

OCC requests that the Public Utilities Commission of Ohio ("PUCO" or "Commission") issue an order to stay collection of the phase-in recovery rider ("PIRR") rates. The rates sought to be collected through the PIRR are a derivative of rates from AEP Ohio's first ESP proceeding,[1] having been created through deferral accounting that was authorized to achieve capped rates. However, the deferrals and the resulting PIRR

[1] *CSP and OP ESP Applications*, Case No. 08-917-EL-SSO et al. ("ESP 1").

rates are excessive because they reflect unjustified provider of last resort ("POLR") charges, collected from customers from April 2009 through May 2011, that were an element of capped rates. These are the same unjustified POLR charges that the Ohio Supreme Court found to be unsupported by the record evidence.[2] And they are the same charges that the PUCO in the Remand Order found to be unjustified.[3] That Remand Order has been appealed to the Ohio Supreme Court and is awaiting the scheduling of oral argument.[4]

The reasons for granting this motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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[2] *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 519-520, 2011-Ohio-1788, ¶29.

[3] ESP 1, Order on Remand (October 3, 2011) at 33.

[4] *In re Application of Columbus S. Power Co.*, Supreme Court Case No. 12-0187.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

A. The Commission's Rejection of the Stipulated ESP

On December 14, 2011, the PUCO issued an Opinion and Order[5] that modified and adopted a September 7, 2011 partial Stipulation and Recommendation in the above-captioned proceedings involving AEP Ohio's second ESP. That Stipulation intended to resolve a number of AEP Ohio proceedings, including AEP Ohio's second ESP application.[6] The Stipulation was opposed by a number of parties, including OCC. A number of parties applied for rehearing of the PUCO's Opinion and Order.

On February 23, 2012, the Commission issued an Entry on Rehearing that revoked the Stipulation.[7] The Commission determined that, after considering the arguments presented on rehearing, the Stipulation "does not benefit ratepayers and the public interest

[5] *CSP and OP ESP Applications*, Case Nos. 11-346-EL-SSO, et al. ("ESP 2"), Opinion and Order (December 14, 2011) ("ESP 2 Order").

[6] ESP 2, Stipulation and Recommendation (September 7, 2011).

[7] Id., Entry on Rehearing (February 23, 2012).

and thus, does not satisfy our three-part test for the consideration of stipulations."[8] The Commission then found that the application modified by the Stipulation must be disapproved.[9]

The Commission also directed AEP Ohio to file, no later than February 28, 2012, new proposed tariffs. The PUCO noted that the new tariffs are 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 1, along with the current uncapped fuel costs and the environmental investment carry (sic) 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."[10]

On February 28, 2012, AEP Ohio filed proposed tariffs to implement the "continued" ESP I rates and tariffs. AEP Ohio indicated that it could incorporate the necessary rate changes into its billing system after the PUCO approved the tariffs.[11] The PIRR was included in the "compliance filing."[12]

Five parties objected to the Companies' collection of the PIRR through the tariffs as being improper and/or unauthorized.[13] OCC and APJN suggested that any collection of the

[8] Id., ¶10.

[9] Id., ¶20.

[10] Id.

[11] ESP 2, Compliance Filing Enclosure Letter at 1 (February 28, 2012).

[12] See id. at 2.

[13] IEU-Ohio's Objection to Ohio Power Company's Compliance Tariffs (March 2, 2012) at 3-5; Objection to Compliance Filing of Ormet Primary Aluminum Corporation (March 5, 2012) at 1-3; Motion to Reject Certain of AEP Ohio's Proposed Rates and Tariffs by OCC and APJN (March 6, 2012) at 6-7; First Energy Solutions Corp.'s Objections to Ohio Power Company's Compliance Tariffs (March 6, 2012) at 1-2.

PIRR by AEP Ohio should be subject to refund.[14] On March 7, 2012, the Commission issued an Entry directing the Companies to remove the PIRR from its compliance tariffs.[15] The Commission stated that it would address the Companies' request to establish the PIRR by subsequent entry in the instant proceedings.[16]

The Commission accepted comments and reply comments in these proceedings. In its comments, OCC opposed the PIRR, but urged the Commission to make any collection of the PIRR subject to refund.[17]

On August 1, 2012, the Commission issued its Finding and Order in these proceedings. In the Order, the Commission declined to adjust the deferral balance to account for the flow-through effects of the Ohio Supreme Court's remand of the ESP 1 Order or the rejected ESP 2 Stipulation. The Commission concluded that "the adjustments proposed by OCC and IEU-Ohio would be tantamount to unlawful retroactive ratemaking."[18] The Commission then authorized AEP Ohio to collect carrying charges on the deferral balance based on the Company's weighted average cost of capital rate until the charges begin to be collected. Once collection begins, carrying charges will be reduced to the Company's long-term cost of debt rate.[19] The Commission also directed the Company to use annual (not monthly) compounding to calculate its deferred fuel balance on a going-forward basis.[20] The Commission deferred the issue of blended

[14] OCC/APJN Motion at 17-18.

[15] Entry (March 7, 2012) at 5.

[16] Id.

[17] OCC Comments (April 2, 2012) at 11-15.

[18] Finding and Order (August 1, 2012) at 20.

[19] Id. at 18.

[20] Id. at 19.

rates for the OP and CSP rate zones to the Companies' modified ESP 2 case.[21] The Commission failed to address OCC's request that the rider be collected subject to refund. On August 8, 2012, the Companies filed tariffs to comply with the PUCO's order. Those tariffs have not yet been approved.

B. The PIRR Tie-In to the OCC/IEU-Ohio Appeal

On April 19, 2011, the Ohio Supreme Court issued a ruling on the OCC and IEU appeal from the Commission's March 18, 2009 Opinion and Order in AEP Ohio's ESP 1 proceeding. The Supreme Court reversed the PUCO on three grounds: retroactive ratemaking[22]; no record support for the PUCO's determination that the POLR charges were cost based[23]; and no statutory basis for approving the carrying charges on environmental investment.[24] Two of these issues – POLR charges and carrying charges on environmental investment – were remanded to the PUCO.[25]

The Commission subsequently conducted an evidentiary hearing on the remanded issues, and on October 3, 2011, the PUCO issued its Remand Order in the ESP 1 case. The PUCO concluded that although given the full opportunity to present evidence, AEP Ohio failed to provide any evidence of its actual POLR costs.[26] The Commission directed AEP Ohio to refund the POLR charges collected subject to refund since the first billing cycle in June 2011. Specifically AEP Ohio was ordered to apply that amount to any deferrals in the fuel adjustment accounts on CSP's and OP's books as of the date of

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[21] Id. at 20.

[22] *In re Application of Columbus Southern Power Co.*, 2011-Ohio-1788, ¶¶9-14.

[23] Id., ¶29.

[24] Id., ¶¶31-35.

[25] Id., ¶¶30, 35.

[26] Remand Order at 18-24.

the Order, with the remaining balance to be credited to customers beginning with the first billing cycle in November 2011.[27]

The Commission, however, declined to apply the $367 million (plus carrying charges) in POLR charges, collected from April 2009 through May 2011, to offset the deferrals in the fuel adjustment accounts as requested by OCC and IEU-Ohio. The Commission concluded that such a proposed adjustment "would be tantamount to unlawful retroactive ratemaking."[28] The Commission noted that it "cannot order a prospective adjustment to account for past rates that have already been collected from customers and subsequently found to be unjustified."[29]

On December 14, 2011, the Commission denied OCC's application for rehearing, as well as IEU-Ohio's. On February 1, 2012, IEU-Ohio filed a Notice of Appeal. The Supreme Court docketed the appeal as Case No. 12-187. On February 10, 2012, OCC filed a Notice of Appeal.

The unjust charges that the appeals seek to remedy are a derivative of the ESP 1 rates that AEP Ohio seeks to collect through the PIRR. The ESP 1 rates are residual rates because they were created through deferral accounting that was intended to allow capped rates. The deferral accounting approved in ESP 1 allowed regulatory assets to be created in order to maintain capped ESP 1 rates for a three-year period. This is because the capped ESP 1 rates consisted of nearly all elements[30] of the Commission-approved ESP 1, including the unjustified POLR charges. Thus, on a dollar-for-dollar basis, the deferrals were

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[27] Id at 38.

[28] Id.at 36.

[29] Id.

[30] There were ESP provisions that were not considered part of the rate cap. These provisions included distribution base rate increases, the transmission cost recovery rider, and future adjustments to the energy efficiency/peak demand rider. See ESP 1, Entry on Rehearing (July 23, 2009) at 9.

overvalued by the approximately $367 million (plus carrying charges) of unjustified POLR charges collected from customers from April 2009 through May 2011. These are the very same deferrals which the Commission has approved for collection from customers through the PIRR.

II. THE COMMISSION SHOULD PROTECT CONSUMERS FROM PAYING THE PHASE-IN RECOVERY RIDER DURING THE PENDING OHIO SUPREME COURT APPEAL.

In order to prevent injury to the interests of the public and avoid irreparable harm to customers, the Movants request the PUCO to exercise its discretionary power under Title 49 of the Revised Code to protect the customers of AEP Ohio. The Commission's authority to act to protect customers can be found under various statutes and case precedent.[31]

The Ohio Supreme Court recognized there is an apparent unfairness when a decision is determined to be unlawful (retroactive ratemaking), and customers get no refund of charges unlawfully collected.[32] However, if the PUCO stays the collection of the PIRR the Commission can avoid further unjust results. Accordingly, the Commission should stay AEP Ohio's collection of the PIRR until the appeals of the Remand Order have been concluded.

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[31] See, e.g., *In re Columbus & Southern Ohio Electric Co.*, Case No. 83-1058-EL-AIR, Entry (November 17, 1982); *Cinnamon Lake Utilities Co. v. Pub. Util. Comm*., 42 Ohio St.2d 259 (1975), where the Ohio Supreme Court noted that R.C. 4909.16 exists to protect the public interest as well as the interests of the public utility.

[32] See *In re Columbus S. Power Co.*, 2011-Ohio-1788, ¶¶15-21.

A. The Law

The Commission has noted that there is no controlling precedent in Ohio setting the conditions under which the Commission will stay one of its orders.[33] The Commission, however, has favored a four-factor test governing a stay that was espoused in a dissenting opinion by Justice Douglas,[34] and which has been deemed appropriate by courts when determining whether to stay an administrative order pending judicial review.[35] This test involves examining:

(a) Whether there has been a strong showing that movant is likely to prevail on the merits;

(b) Whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay;

(c) Where the public interest lies; and

(d) Whether the stay would cause substantial harm to other parties.[36]

As discussed below, OCC here meets this test.

B. The Commission Should Grant a Stay to Prevent Collection of the Phase-In Recovery Rider, as the Grounds for a Stay Are Met.

1. There is a strong likelihood that OCC's appeal of the Remand Order will prevail on the merits.

In the appeal of the ESP 1 Order, the Court found that the Commission erred in characterizing the POLR as a cost-based charge, when the evidence did not support such

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[33] See *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing (February 20, 2003) ("Access Charge Decision") at 5.

[34] See *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 31 Ohio St.3d 604.

[35] Access Charge Decision at 5.

[36] Id.

a claim.[37] The Court remanded the issue to the Commission.[38] On remand, the Commission concluded that "AEP-Ohio has failed to present evidence of its actual POLR costs and has not justified recovery of POLR charges at the level reflected in its existing rates."[39] The POLR charges collected from customers during the ESP term were not justified. The Commission, however, refused to reduce the deferrals in the fuel adjustment accounts to address the unjustified collection of the POLR charge.[40]

Yet the deferred fuel account balance, which constitutes the basis of the PIRR rates, **can** be adjusted. There is nothing sacrosanct about these deferrals or the fuel clause that created them that make them untouchable. Thus, unlike in *Lucas County Board of Commissioners v. Pub. Util. Comm.*,[41] here there is a mechanism within the ESP residual rates by which the Commission may make adjustments.

The PIRR rates are based on deferrals and regulatory assets that AEP Ohio was given accounting authority to create. These fuel adjustment account deferrals and the associated regulatory assets can be adjusted or revalued to balance the overpayment of POLR, or credit customers for unlawful charges.[42] Adjustments to the value of deferrals are regularly made by the Commission in numerous cases, including fuel adjustment clause cases.

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[37] *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶¶24-29.

[38] Id., ¶30.

[39] Remand Order at 24.

[40] Id. at 36.

[41] 80 Ohio St.3d 344, 686 N.E.2d 501.

[42] Indeed, the Commission itself recognized that adjustments to the PIRR deferrals can be made. See for example, *ESP 2 Order* at 59 (PUCO found that "if the Commission or Court issues a decision that impacts the amount of PIRR regulatory assets, AEP-Ohio shall appropriately adjust the book balance of the PIRR regulatory assets or use a mechanism to make the appropriate adjustment ordered by the Commission or the Court that prospectively adjusts rates through a credit or charge of the PIRR").

The Company's recent 2009 Fuel Audit proceeding is a prime example of the Commission adjusting the value of these very same fuel deferrals. The proceeding was the first of three annual proceedings in which the cost of fuel used to generate electricity supplied for 2009-2011 was reviewed for prudence, reconciliation, and accounting. As part of the proceeding, Financial and Management/Performance audits were conducted.

Numerous audit recommendations were made, including *inter alia*, recommendations pertaining to the causes of large under-recovery of fuel costs in 2009.[43] The Auditor singled out two contract events that were the sources of the large under-recovery of fuel costs.[44] One of the events pertained to a buy-out of a coal contract in 2008. This buyout led to an increase in the Companies' 2009 fuel (mostly coal) expenses. The 2008 buyout was structured as a Settlement Agreement where, in return for the Companies buying out the long-term coal contract, they received a lump sum payment ($30 million) and a coal reserve in West Virginia. Ohio Power booked the coal reserve as an unregulated asset in 2008, and valued it at $41 million.[45]

The auditor recommended that the Commission should review whether any proceeds from the Settlement Agreement should be credited against Ohio Power's fuel expense under-recovery.[46] It concluded that the contract was an OP asset and the value (i.e. a lower-than-market price of coal supply) associated with it would have flowed

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[43] *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC et al. Opinion and Order at 3-6 (Jan. 23, 2012). The under-recovery of fuel costs in 2009 was $37.5 million for CSP and $297.6 million for OP.

[44] Id. at 4.

[45] Id.

[46] Id. at 5.

through to OP customers had there not been a buy out of the contract.[47] As it were, the difference between the replacement coal and the contract price of the coal caused a drastic increase in the cost of fuel, and the large OP fuel expense under-recovery.[48] The Auditor noted that "[e]quity suggests that the Commission should consider whether some of the realized value should be credited against the under-recovery."[49]

On January 23, 2012, the Commission issued an Opinion and Order in Case No. 09-872-EL-FAC. The Commission determined that "all of the realized value from the Settlement Agreement should be credited against OP's FAC under-recovery, namely the portion of the $30 million 2008 lump sum payment not already credited to OP ratepayers as well as the $41 million value of the West Virginia coal reserve that AEP booked when the Settlement Agreement was executed."[50] Additionally, the Commission ordered that AEP hire an auditor specifically to examine the value of the West Virginia coal reserve and to make a recommendation as to whether there is any increased value associated with the coal reserve that could be credited against OP's under-recovery.

In reaching its decision, the Commission described the long-term coal agreement as a utility asset whose value (lower coal costs) would have been given to customers but for the early contract termination. The Commission determined that the real economic cost of coal used during the audit period should include "more of the value realized by AEP" for entering into the Settlement Agreement. That value should have been realized by the utility's customers through a credit to OP's under-recovery and deferrals.

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[47] Id.

[48] Id. at 4.

[49] Id. at 6.

[50] Id. at 12.

In reaching its decision the Commission discussed in detail the Companies' arguments opposing crediting of the fuel deferrals with the revenues of the Settlement Agreement.[51] The Companies had argued that the Commission was prohibited from making such retroactive adjustments under *Keco* and *Lucas County Commrs.* The Commission described the Companies' arguments as "unavailing."[52]

Keco, the Commission announced, does not apply in this situation. "The Commission is not considering modifying a previous rate established by a Commission order through the ratemaking process as the Court considered in *Keco*. Rather, the Commission, by ordering the Companies to credit more of the proceeds from the Settlement Agreement to OP's deferral balance, is establishing a future rate based upon the real cost of coal used by the Companies to generate electricity during the 2009 FAC audit period."[53] Likewise it found that *Lucas County Commrs.* does not apply either. "In *Lucas Cty*., the Court held that the Commission was not statutorily authorized to order a refund of, or credit for, charges previously collected by a public utility where those charges were calculated in accordance with an experimental rate program which has expired. As noted above, the Commission has not made a determination modifying the rate the Companies collected during 2009. Additionally, there is no experimental rate program involved in the current case. Thus, *Lucas Cty*. does not apply in this matter."[54]

This Commission's Order is instructive because these fuel costs deferrals which were credited for the Settlement Agreement proceeds are the very same fuel deferrals that

[51] Id. at 13-14.

[52] Id. at 13.

[53] Id.

[54] Id. at 14.

OCC and IEU argue should be adjusted for POLR revenues collected from customers. But in the fuel adjustment clause proceeding the Commission determined that the fuel deferrals *can* be reduced on a going forward basis to adjust for a past event--a 2008 settlement agreement--without amounting to retroactive ratemaking.

It is unlikely that the Court will agree with the PUCO that adjusting deferrals or the value of regulatory assets is retroactive ratemaking that is prohibited in a post-SB 221 environment. Based on these factors, there is a strong likelihood that OCC will prevail on the merits regarding both of these issues on remand.

2. Allowing unlawful rates to be collected pending the appeal would likely cause irreparable harm to AEP Ohio's customers.

Harm is irreparable "when there could be no plain, adequate and complete remedy at law for its occurrence and when any attempt at monetary restitution would be 'impossible, difficult, or incomplete.'"[55] In the context of judicial orders, the Supreme Court of Ohio traditionally looks to whether there is an effective legal remedy if the order takes effect, to determine whether to stay the proceedings.[56]

In *Tilberry v. Body*, the Ohio Supreme Court found that the effect of a court order calling for the dissolution of a business partnership would cause "irreparable harm" to the partners because "a reversal … on appeal would require the trial court to undo the entire accounting and to return all of the asset distributions" – a set of circumstances that would be "virtually impossible to accomplish."[57] In *Sinnott v. Aqua-Chem, Inc.*, the Ohio Supreme Court found that a lower court's pre-trial findings could be appealed at the point

[55] *FOP v. City of Cleveland* (8th Dist. 2001), 141 Ohio App.3d 63, 81, citing *Cleveland v. Cleveland Elec. Illuminating Co.* (8th Dist. 1996), 115 Ohio App.3d 1, 12, appeal dismissed, 78 Ohio St.3d 1419 (1997).

[56] See, e.g., *Tilberry v. Body* (1986), 24 Ohio St. 3d 117; *Sinnott v. Aqua-Chem, Inc.* (2007), 116 Ohio St. 3d 158, 161.

[57] *Tilberry*, 24 Ohio St.3d at 121.

they were issued because the findings allowed the case to proceed to trial.[58] The majority reasoned that "the incurrence of unnecessary trial expenses is an injury that cannot be remedied by an appeal from a final judgment,"[59] and so concluded that "[i]n some instances, '[t]he proverbial bell cannot be unrung and an appeal after final * * * judgment on the merits will not rectify the damage' suffered by the appealing party."[60] Here, the bell is ringing loudly that Ohio customers need the PUCO to protect their interests.

Although, as Justice Rehnquist observed, "the temporary loss of income, *ultimately to be recovered*, does not usually constitute irreparable injury,"[61] *Tilberry* and *Sinnott* illustrate that economic harm does become irreparable where the loss cannot be recovered. Here, Ohio customers, who will be paying the PIRR, are confronted with arguments that they cannot recover the unlawful charges they have already paid. So as the PIRR rates continue to be collected, the amount of the deferral balance left to be collected diminishes. At some point, the possibility of fulfilling a Court-ordered full refund of the $367 million POLR charges, plus carrying charges, may be gone unless the Court acts quickly on the appeal (which is outside OCC's or others' control) or the Commission stays the collection of rates.

The Commission can act to protect AEP Ohio customers from this harm. The Commission should stay AEP Ohio's collection of the PIRR until the appeal before the Supreme Court has been decided.

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[58] *Sinnott*, 116 Ohio St.3d at 164.

[59] Id. at 163.

[60] Id. at 162 (quoting *Gibson-Myers & Assocs. v. Pearce* (9th Dist.), 1999 Ohio App. LEXIS 5010, *7-*8 (compelled disclosure of a trade secret would "surely cause irreparable harm").

[61] *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (emphasis added).

3. A stay would further the public interest.

In Justice Douglas' dissent in the Ohio Supreme Court case which recommended standards for a stay of a PUCO decision, he noted that PUCO Orders "have effect on everyone in this state – individuals, business and industry."[62] That effect on customers is all the more pronounced in these difficult economic times when customers can ill afford increases in what they pay for an essential service – electricity. It thus was fitting that Justice Douglas, in articulating a standard for stays, emphasized that the most important consideration is "above all in these types of cases, where lies the interest of the public" and that "the public interest [] is the ultimate important consideration for this court in these types of cases."[63]

As discussed above, the stay OCC seeks would prevent irreparable harm to AEP Ohio's customers, with no substantial harm to the utility, as discussed below. In addition, the stay would provide some relief to customers who are already burdened by the fragile state of the economy. The public interest, therefore, would be furthered by a stay of the collection of the rate elements found to be unlawful by the Ohio Supreme Court.

4. A stay would not cause substantial harm to AEP Ohio.

Any harm that AEP Ohio will suffer if it is prohibited from collecting the PIRR is not a legally cognizable harm because it flows from the ultra vires acts of the Commission. There is no entitlement to additional revenues, because the Commission's action in approving the collection of increased rates was an ultra vires act that is prohibited by law. To permit AEP Ohio to claim harm based on not receiving revenues it is not entitled to collect would permit it to be unjustly enriched.

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[62] *MCI*, 31 Ohio St.3d at 606.

[63] Id.

Additionally, a stay of PIRR collection while the appeals are pending will not ultimately preclude AEP Ohio from collecting that charge, should the Supreme Court decline to adjust the ESP 1 rates.[64] It will merely be a matter of timing which does not rise to substantial harm.

III. CONCLUSION

The Commission should protect AEP Ohio's customers so they do not have to endure any more of the unfairness resulting from the ESP 1 case. This unfairness manifests itself in the finding of the Ohio Supreme Court that retroactive ratemaking is unlawful, and yet there can be no refund for the $63 million collected retroactively.[65] The Commission should exercise its powers to stay the collection of the PIRR. This can be done without substantial harm to the utility. It is clearly in the interest of the public to grant a stay.

This would ensure that, at most, the "harm" incurred by AEP Ohio will merely be delay in collecting these revenues, not denial. However, if the Commission decides not to stay the collection of the PIRR, AEP Ohio customers will not have that same advantage. For these reasons, it is incumbent upon the Commission to act in order to protect all AEP Ohio customers.

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[64] See, e.g., *In the Matter of the Complaint of the Northeast Ohio Public Energy Council v. Ohio Edison Company*, Case No. 09-423-EL-CSS, Entry (July 8, 2009) at 5-6 (granting a stay and noting that the utility failed to show substantial harm and had not argued that it would be unable to collect switching fees if it ultimately prevailed in the proceeding).

[65] *In re Columbus S. Power Co.*, 2011-Ohio-1788, ¶17.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion has been served, via electronic service, to the counsel identified below this 10th day of August 2012.

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Summary: Motion Motion to Stay AEP Ohio's Collection of Phase-In Recovery Rider Rates From Customers by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.