**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Long-Term Forecast Report of **Ohio Power Company** and Related Matters.  In the Matter of the Long-Term Forecast Report of **Columbus Southern Power Company** and Related Matters. | :  :  :  :  :  : | **Case No. 10-501-EL-FOR**  **Case No. 10-502-EL-FOR** |

**REPLY BRIEF IN RESPONSE TO SEPTEMBER 5, 2012 ORDER**

**SUBMITTED ON BEHALF OF THE STAFF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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# INTRODUCTION

On September 5, 2012 the Commission directed the parties to this case to file briefs addressing certain listed questions. The initial briefs have been filed in this matter and several parties have chosen to address items outside the scope of this proceeding. Although these matters have been considered and properly rejected by the Commission in the past, this reply brief will respond in summary fashion to these questions yet again.

# DISCUSSION

## The proper forum for determining “need” for Turning Point is this case.

It is argued that the “need” for Turning Point should be determined in an ESP case. This matter has already been discussed in Section I(A) of the Staff’s Reply brief. Suffice it to say that the General Assembly has determined otherwise.

R.C. 4928.143(B)(2)(c) allows the imposition of a non-bypassable charge by an EDU for a generating facility that meets a number of conditions including:

However, no surcharge shall be authorized unless the com-mission first determines in the proceeding that there is need for the facility based on resource planning projections sub­mitted by the electric distribution utility.

This section shows that the legislature’s intent was that the review occur in forecasting proceedings because that is where, statutorily, resource plans are considered, specifically:

(C) Each person owning or operating a major utility facility within this state, or furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state shall furnish a report to the commission for its review. The report shall be furnished annually, except that for a gas or natural gas company the report shall be furnished every three years. The report shall be termed the long-term forecast report and shall contain:

A year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource plan to meet demand….[[1]](#footnote-1)

Thus, where an EDU is contemplating seeking a non-bypassable charge through an ESP under R.C. 4928.143(B)(2)(c), the EDU must have the need for that facility considered in a forecasting case. That is exactly what this docket is about. The statute has been ful­filled and the argument should be rejected.

## A non-bypassable charge is not at issue in this case.

Several commenters have used the Commission’s directive as an opportunity to reargue their concerns about the imposition of a non-bypassable charge for the Turning Point project. The question is simply not presented here. AEP has made no request for a charge of any sort in this docket. The commenters raise a number of questions and con­cerns about the imposition of such a charge but this is not the venue in which these con­cerns can or should be addressed. Although the record is clear that SRECs in the quantity that would be supplied by the Turning Point project are clearly needed in Ohio, whether there should be a non-bypassable charge associated with it is a matter to be determined through the ESP process whether through the main SSO case or some subsidiary docket. This is because the non-bypassable charge is a component of an ESP plan. This is clear from the statute that provides:

(B) Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this sec­tion, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code: …

(2) The plan may provide for or include, without limitation, any of the following:

\*      \*      \*

(b) A reasonable allowance for construction work in progress for any of the electric distribution utility’s cost of construct­ing an electric generating facility or for an environmental expenditure for any electric generating facility of the electric distribution utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. Any such allowance shall be subject to the construction work in pro­gress allowance limitations of division (A) of section 4909.15 of the Revised Code, except that the commission may authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. No such allowance for gen­erating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is need for the facility based on resource planning pro­jections submitted by the electric distribution utility. Further, no such allowance shall be authorized unless the facility’s construction was sourced through a competitive bid process, regarding which process the commission may adopt rules. An allowance approved under division (B)(2)(b) of this sec­tion shall be established as a nonbypassable surcharge for the life of the facility.

(c) The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the com­mission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which sur­charge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. However, no sur­charge shall be authorized unless the commission first deter­mines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Additionally, if a surcharge is authorized for a facility pursuant to plan approval under divi­sion (C) of this section and as a condition of the continuation of the surcharge, the electric distribution utility shall dedicate to Ohio consumers the capacity and energy and the rate asso­ciated with the cost of that facility. Before the commission authorizes any surcharge pursuant to this division, it may consider, as applicable, the effects of any decommissioning, deratings, and retirements.[[2]](#footnote-2)

Thus all questions regarding the availability or advisability of a non-bypassable charge should be vetted in the ESP context, not here. As this matter has been more fully dis­cussed in earlier briefs, no more need be noted here.

## Some erroneous comments should be noted

IEU claims that Staff witness Bellamy erred in representing the amount of certi­fied facilities. There is, in fact, no error. IEU relies for its calculation of the amount of SRECs on the date of certification of facilities. Mr. Bellamy’s calculation of the amount of certified facilities available was based on the in service date. As the amount of SRecs produced is determined by when a facility is in service rather than when the facil­ity is certified, Mr. Bellamy’s calculation is the more relevant. Mr. Bellamy’s calculation reflects the timing of solar construction and is therefore the more useful perspective.

Additionally, IEU claims that all the testimony in the case shows that “…whether Turning Point is needed from a “resource planning” perspective is done by looking at peak demand.” Mr. Bellamy’s testimony does not make this point, indeed it is directed towards showing that a needed resource, SRECs, should be planned from a state-wide, total requirement perspective.

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# CONCLUSION

In sum, as noted in the initial briefs, Turning Point is needed to meet state-wide demand for SRECs. Whether there should be a non-bypassable charge associated with it is a matter for another case.

Respectfully submitted,

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# CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply Brief in Response to September 5, 2012 Order submitted on behalf of the Staff of the Public Utilities Commission of Ohio, has been served upon the below-named counsel via traditional and electronic mail this 17th day of October, 2012.

/s/ Thomas W. McNamee

**Thomas W. McNamee**

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1. R.C. 4935.04(C)(1) (emphasis added). [↑](#footnote-ref-1)
2. R.C. 4928.143(B)(2)(b), (c). [↑](#footnote-ref-2)