**Before**

**The Public Utilities Commission of Ohio**

In the Matter of the Fuel Adjustment ) Case No. 10-268-EL-FAC

Clauses for Columbus Southern Power ) Case No. 10-269-EL-FAC

Company and Ohio Power Company and )

Related Matters for 2010. )

In the Matter of the Application the Fuel )

Adjustment Clauses for Columbus Southern ) Case No. 11-281-EL-FAC

Power Company and Ohio Power Company )

and Related Matters. )

**Post Hearing Brief of Industrial Energy Users-Ohio**

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**Post Hearing Brief of Industrial Energy Users-Ohio**

# Introduction

This proceeding involves the Public Utilities Commission of Ohio’s (“Commission”) second review of Ohio Power Company’s (“OPCo”) and Columbus Southern Power Company’s (“CSP”) (collectively, “AEP-Ohio”) Fuel Adjustment Clause (“FAC”). In the first review of AEP-Ohio’s FAC, the Commission clarified that the purpose of auditing the FAC is to evaluate the prudency of AEP-Ohio’s FAC-related transactions, AEP-Ohio’s accounting practices, and AEP-Ohio’s true and accurate costs.[[1]](#footnote-1)

Initially, Industrial Energy Users-Ohio (“IEU-Ohio”) urges the Commission to address issues that have carried over from the audit of AEP-Ohio’s 2009 FAC. More specifically, the Commission should promptly determine the value of the coal reserve that the 2009 FAC Order determined should flow back to customers, verify the Commission-ordered credit to jurisdictional customers, and ensure that customers receive the benefit of the customer-funded market discount that will flow to AEP-Ohio (or its affiliate) after the FAC expires.

In the audit periods that are subject to the Commission’s review in these proceedings, IEU-Ohio urges the Commission to disallow AEP-Ohio’s double recovery of purchased power costs and carrying charges. More specifically, although AEP-Ohio’s base generation revenue provided sufficient revenue to compensate AEP-Ohio for all of its capacity and non-fuel purchased power costs, in each year AEP-Ohio recovered over $110 million in non-fuel purchased power costs through the FAC. The duplicative recovery of such costs that took place through AEP-Ohio’s FAC was unlawful and unreasonable.

Moreover, IEU-Ohio urges the Commission to direct AEP-Ohio to account for the benefit of accumulated deferred income taxes (“ADIT”) when calculating carrying costs on the portion of the revenue increase that was authorized subject to collection after AEP-Ohio’s first electric security plan (“ESP”). AEP-Ohio’s calculation of carrying charges without accounting for the benefit of ADIT is a violation of sound regulatory practices and precedent.

# Background

On March 18, 2009, the Commission issued an Opinion and Order modifying and approving an ESP for AEP-Ohio, including an FAC.[[2]](#footnote-2) The ESP I Order authorized AEP-Ohio to establish the FAC to recover fuel costs and non-fuel purchased power costs associated with the Ohio Valley Electric Corporation (“OVEC”) and Lawrenceburg Generating Station (“Lawrenceburg”). There are scant details regarding the OVEC and Lawrenceburg purchased power contracts in the ESP I Order and AEP-Ohio’s supporting testimony. Although the ESP I Order authorized an FAC for AEP-Ohio, AEP-Ohio’s implementation of the FAC is subject to periodic audits to test AEP-Ohio’s management policies and practices and the accounting policies and practices that are embedded in the FAC.

The ESP I Order also authorized AEP-Ohio to increase rates by a total dollar amount.[[3]](#footnote-3) A portion of that total increase was collected during the term of the ESP and a portion was deferred for potential future recovery (the “deferred balance”) through a non-bypassable rider after the end of AEP-Ohio’s ESP, subject to necessary adjustments. The Commission permitted AEP-Ohio to add a carrying charge to the portion of the increase that was subject to collection in the future at a percentage rate calculated based on a weighted average cost of capital (“WACC”) method (approximately 11% in this case).[[4]](#footnote-4) The Commission also permitted AEP-Ohio to accrue carrying charges on the deferred balance without adjusting for ADIT.[[5]](#footnote-5)

Pursuant to a Commission order, Energy Ventures Analysis[[6]](#footnote-6) (“EVA”) submitted its first audit of the FAC on May 14, 2010 for the 2009 audit period (“2009 Audit”). As is relevant to this proceeding, the 2009 Audit revealed that AEP-Ohio had over recovered fuel costs from customers by failing to properly account for benefits it received where the benefits resulted from costs which AEP-Ohio passed on to consumers through the FAC. Those benefits resulted from an AEP-Ohio settlement agreement (“Buy-Out”) with one of its coal suppliers, which relieved the supplier from performing under the terms of a coal contract that allowed AEP-Ohio to purchase coal at a price that was below the prevailing market-price (“Supplier Contract”).[[7]](#footnote-7) In return for agreeing to the Buy-Out, AEP-Ohio received $30 million, paid in installments,[[8]](#footnote-8) and a coal reserve in West Virginia (the “Coal Reserve”).[[9]](#footnote-9) As a result of the Buy-Out, OPCo purchased significantly more expensive replacement coal.[[10]](#footnote-10) The Commission held that “to determine the real economic cost of coal during the audit period, the Commission must consider both the revenues and the benefits received by the Companies pursuant to the Settlement Agreement and not rely solely on the price paid for coal during 2009.”[[11]](#footnote-11) To assure that customers realized the benefits of the Buy-Out, the Commission ordered that:

[A]ll 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.[[12]](#footnote-12)

The Commission, however, granted AEP-Ohio’s application for rehearing and determined that AEP-Ohio should limit the credit to the amount allocable to the retail jurisdiction.[[13]](#footnote-13) AEP-Ohio has not yet identified how it calculated the retail jurisdictional credit. In the audit related to the 2011 audit period, the Auditor recommended that “AEP Ohio's crediting of those clarified amounts against OPCO's FAC under-recovery should be reviewed in the next audit.”[[14]](#footnote-14)

Additionally, the 2009 Audit Report revealed that CSP agreed to pay a coal producer an increase in the base price for a certain tonnage of coal during 2009 and received an option to acquire coal at a discount off the market price per ton for two three-year periods beginning in 2013 (the “Contract Support Agreement”).[[15]](#footnote-15) At a high level, the Contract Support Agreement created a mismatch between the recognition of the costs and benefits. The costs were passed on to customers in the *2009 FAC Case*, but some of the benefits will not be realized until 2013 and after. The 2009 FAC Order stated that it was not appropriate to address the mismatch during the 2009 Audit, but the Commission would address the issue in a future audit period.[[16]](#footnote-16) It is now clear that after January 1, 2015, AEP-Ohio will establish standard service offer ("SSO") prices through a competitive bidding process ("CBP"), and, as a result, AEP-Ohio will not assign fuel-related costs to customers.[[17]](#footnote-17) Thus, a portion of the customer funded discount will accrue at a time when customers will not receive a benefit.

EVA submitted its second and third audit reports summarizing the results of its review and recommendation of AEP-Ohio’s 2010 and 2011 FAC on May 26, 2011 and May 24, 2012 respectively.[[18]](#footnote-18) Among other things, the 2010 and 2011 Audit Reports recommend that the Commission revisit the carrying charge calculation on the deferred balance. Specifically, the Audit Reports identify that unless the carrying charge methodology includes an adjustment for ADIT, AEP-Ohio will be allowed to accrue carrying charges on cost-free capital.[[19]](#footnote-19)

Shortly before the hearing, it was revealed in another proceeding that AEP-Ohio may have double recovered its capacity and purchased power costs from customers.[[20]](#footnote-20) While recognizing the potential double recovery, the Commission determined that parties should explore any potential double recovery in a FAC case, where purchased power costs are reviewed.[[21]](#footnote-21)

The parties were unable to resolve the matters presented by the audit reports and these cases proceeded to hearing on November 18, 2013. At the hearing, both AEP-Ohio and the Auditor addressed the treatment of the recovery of OVEC and Lawrenceburg purchased power costs collected by AEP-Ohio in the FAC. The Auditor and AEP-Ohio testified that AEP-Ohio flowed through the FAC approximately $114 million per year in non-fuel purchased power costs (demand charges): $56 million per year in demand charges for OVEC (CSP flowed through $13 million, and OPCo flowed through approximately $43 million[[22]](#footnote-22)) and $58 million for Lawrenceburg demand charges (CSP flowed through $58 million).[[23]](#footnote-23) The OVEC and Lawrenceburg demand charges were calculated using a traditional cost-based ratemaking methodology.[[24]](#footnote-24) The demand charges ensure that OVEC and AEP Generation receive a return “of” and return “on” their investment in the OVEC and Lawrenceburg units.[[25]](#footnote-25) AEP-Ohio owns approximately 20% of OVEC and AEP Generation is a subsidiary of AEP-Ohio’s parent company, American Electric Power.[[26]](#footnote-26)

AEP-Ohio testified that it allocates 100% of the demand charges associated with OVEC[[27]](#footnote-27) and Lawrenceburg[[28]](#footnote-28) to the FAC even though these generating units are not used exclusively to serve SSO customers.[[29]](#footnote-29) These demand charges remain constant regardless of the number of customers that take service from a competitive retail electric service (“CRES”) provider because they are collected solely through the FAC[[30]](#footnote-30)—the charges are merely collected from a smaller population of SSO customers. Moreover, AEP-Ohio testified that it does not reduce the demand charges flowed through the FAC for any off-system sales margins associated with the Lawrenceburg and OVEC units.[[31]](#footnote-31)

During the hearing in these FAC proceedings, IEU-Ohio attempted to submit evidence regarding AEP-Ohio’s double recovery of Lawrenceburg and OVEC purchased power costs through the FAC and base generation rates during 2010 and 2011. The Attorney Examiner, however, precluded IEU-Ohio’s counsel from cross-examining witnesses and admitting exhibits to lay the evidentiary foundation to demonstrate that AEP-Ohio double recovered its purchased power costs through the FAC.[[32]](#footnote-32) The Attorney Examiner limited IEU-Ohio’s scope of cross-examination to issues identified by the Auditor in the 2010 and 2011 Audit Reports.[[33]](#footnote-33) IEU-Ohio proffered the exhibits for the Commission’s consideration.[[34]](#footnote-34)

The proffered exhibits demonstrate that AEP-Ohio’s 2011 and 2012 base generation rates provide compensation equivalent to $355 per megawatt day.[[35]](#footnote-35) The proffered exhibits also demonstrate that AEP-Ohio claimed and the Commission held that, based upon 2010 vintage information, AEP-Ohio is fully compensated for its capacity and purchased power costs (including OVEC and Lawrenceburg) by $355 per megawatt day ($188.88 per megawatt day with an energy credit).[[36]](#footnote-36)

 Additionally, EVA testified that at the time it completed the 2010 and 2011 Audit Reports, EVA was not aware that AEP-Ohio had indicated that its base generation rates produce revenue equivalent to $355 per megawatt day.[[37]](#footnote-37) EVA was also not aware that AEP-Ohio had indicated that it is fully compensated for its fuel and purchased power costs by compensation of $355 per megawatt day (without an energy credit), or that the Commission would determine that $188.88 per megawatt day (with an energy credit) fully compensated AEP-Ohio for its capacity and purchased power costs.[[38]](#footnote-38) During the hearing, however, the Auditor (witness Smith) indicated that when a potential double recovery comes to light after an audit report is issued, at a minimum, the issue should be left open for a future auditor to evaluate the double recovery: “I think if there’s an issue of a double count **such as we seem to have here**, it seems like that issue may deserve some further investigation.”[[39]](#footnote-39)

# Argument

## The Attorney Examiner Erred by precluding IEU-Ohio’s counsel from cross-examining witnesses and admitting exhibits regarding AEP-Ohio’s double recovery of non-fuel purchased power costs through the FAC during 2010 and 2011

### AEP-Ohio’s over recovery of purchased power costs is relevant

During the hearing, the Attorney Examiner determined that evidence related to AEP-Ohio’s double recovery of non-fuel purchased power costs in the FAC and base generation rates was not relevant.[[40]](#footnote-40) Consequently, the Attorney Examiner denied admission of exhibits and precluded IEU-Ohio from cross-examining the Auditor and AEP-Ohio witnesses regarding the calculation of AEP-Ohio’s cost of capacity and purchased power and the revenue produced by AEP-Ohio’s *ESP I* base generation rates.[[41]](#footnote-41) Under Rule 4901:1-15, Ohio Administrative Code (“OAC”), any party that is adversely affected by any oral ruling issued during a hearing may raise the propriety of that ruling as an issue for the commission's consideration by discussing the matter as a distinct issue in its initial brief. As discussed below, the Attorney Examiner erred.

“Cross-examination shall be permitted on all relevant matters . . . .”[[42]](#footnote-42) All relevant evidence[[43]](#footnote-43) is admissible unless otherwise prohibited.[[44]](#footnote-44) Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”[[45]](#footnote-45)

It is unlawful and unreasonable for an electric distribution utility (“EDU”) to recover costs through the FAC if the EDU receives compensation for such costs elsewhere.[[46]](#footnote-46) The Commission itself recently held that the possible double recovery of purchased power costs through the FAC is relevant for consideration in an FAC case:

Recently, in *In re Ohio Power Company*, Case No. 12-3254-EL-UNC, intervenors in that proceeding raised concerns about the possible double recovery of certain capacity related costs by AEP Ohio. *In re Ohio Power Company*, Case No. 12-3254-EL-UNC, Opinion and Order (November 13, 2013) at 15-16. ***The Commission directs EVA to review and investigate these allegations as part of this audit and to recommend appropriate Commission action based on this review***.[[47]](#footnote-47)

The “fact” of consequence in this proceeding was whether AEP-Ohio double-recovered its non-fuel purchased power costs in 2010 and 2011 through the FAC.

And, the proffered exhibits demonstrate that AEP-Ohio’s base generation rates in effect during 2010 and 2011 provided AEP-Ohio with compensation equivalent to $355 per megawatt day.[[48]](#footnote-48) Moreover, the proffered exhibits demonstrate that AEP-Ohio is fully compensated for its cost of capacity and purchased power—Lawrenceburg and OVEC demand charges—by compensation of $355 per megawatt day.[[49]](#footnote-49) Despite its 2010 and 2011 base generation rates fully compensating it for the Lawrenceburg and OVEC demand charges, AEP-Ohio recovered the same demand charges through the FAC in 2010 and 2011.[[50]](#footnote-50) Thus, the proffered exhibits demonstrate that AEP-Ohio double recovered Lawrenceburg and OVEC demand charges through the FAC.

Because the exhibits and cross-examination would have demonstrated that AEP-Ohio is double recovering demand charges for OVEC and Lawrenceburg, the proffered exhibits would have showed that a fact of consequence—a double recovery—is more probable of occurrence. Thus, the proffered exhibits are relevant and the Attorney Examiner erred when she refused to admit those exhibits and precluded cross-examination.

Moreover, each of the proffered exhibits[[51]](#footnote-51) is part of the evidentiary record in the *Capacity Case* used by AEP-Ohio to support AEP-Ohio’s full cost of capacity and purchased power.[[52]](#footnote-52) The proffered exhibits should have also been admitted as evidence during the hearing in this case and IEU-Ohio should not have been precluded from cross-examining witnesses on these exhibits; thus, IEU-Ohio requests that the Commission admit the proffered exhibits into the record or take administrative notice[[53]](#footnote-53) of the facts in the record in the *Capacity Case*.

If the Attorney Examiner’s error is not corrected, customers will be overcharged by more than $220 million in purchased power costs during 2010 and 2011.[[54]](#footnote-54) Thus, IEU-Ohio was prejudiced by the error.

### The proffered exhibits demonstrate that AEP-Ohio was fully compensated for its purchased power costs by its base generation rates in effect in 2010 and 2011

Had IEU-Ohio's exhibits been properly admitted, the record would demonstrate that AEP-Ohio unlawfully double recovered non-fuel purchased power through the FAC. As discussed below, IEU-Ohio’s proffered exhibits, drawn from the record of the *Capacity Case*, demonstrate that AEP-Ohio fully recovered its cost of capacity and non-fuel purchased power—including OVEC and Lawrenceburg—through its base generation rates.[[55]](#footnote-55) Thus, AEP-Ohio’s additional recovery through the FAC of non-fuel costs related to Lawrenceburg and OVEC over compensated AEP-Ohio.

In the *Capacity Case*, AEP-Ohio requested authority to increase the amount of compensation that it receives for the provision of capacity service. AEP-Ohio submitted the testimony of Kelly Pearce to quantify AEP-Ohio’s embedded cost of capacity and purchased power. Mr. Pearce calculated AEP-Ohio’s cost of capacity using OPCo’s and CSP’s 2010 Federal Energy Regulatory Commission (“FERC’) Form 1[[56]](#footnote-56) and concluded that, on a merged basis, AEP-Ohio’s fully embedded cost of capacity and purchased power is $355 per megawatt day.[[57]](#footnote-57) Mr. Pearce included the non-fuel purchased power costs of Lawrenceburg and OVEC in his calculation of the $355 per megawatt day price.[[58]](#footnote-58)

 As the Commission recognized in the Capacity Case Order, AEP-Ohio witness Allen testified that AEP-Ohio’s *ESP I* base generation rates produced revenue equivalent to $355 per megawatt day: “AEP-Ohio contends that its proposed cost-based capacity pricing roughly approximates and is, therefore, comparable to the amount that the Company receives from its SSO customers for capacity through base generation rates. (AEP-Ohio Ex. 142 at 19-20; Tr. II at 304, 350).”

 On July 2, 2012, the Commission modified and approved AEP-Ohio’s proposal to increase its capacity compensation through a cost-based formula. The Commission determined that $188.88 per megawatt day fully compensates AEP-Ohio for its capacity and purchased power costs. The Commission reached that result by making minor adjustments to AEP-Ohio’s embedded costs of capacity and then reducing that amount by an energy credit.[[59]](#footnote-59) The Commission did not make any adjustments related to purchased power; thus, the Commission determined that $188.88 per megawatt day fully compensates AEP-Ohio for its capacity, including non-fuel purchased power costs related to OVEC and Lawrenceburg.[[60]](#footnote-60)

 AEP-Ohio’s 2010 and 2011 base generation rates provided compensation equal to $355 per megawatt day, which fully compensated AEP-Ohio for its capacity costs and non-fuel purchased power costs related to OVEC and Lawrenceburg. But AEP-Ohio also recovered the same Lawrenceburg and OVEC costs through the FAC during 2010 and 2011.[[61]](#footnote-61) Because it is recovering the same costs through both its non-fuel base generation rates and its FAC, AEP-Ohio double recovered its purchased power costs. The double recovery is demonstrated in more detail in the table below.

|  |  |
| --- | --- |
| **CSP Capacity Formula Components** | **CSP Double Recovery of Purchased Power Costs in FAC** |
| CSP’s Annual Fixed Production Costs for 2010 was $477,093,822.[[62]](#footnote-62)  |  |
| The Annual Fixed Production Costs consisted of $217,843,953 in O&M expense.[[63]](#footnote-63)  |  |
| $106,281,091 of the O&M expense consisted of purchased power costs.[[64]](#footnote-64)  |  |
| ***Purchased power costs consisted of $60,734,136 for Lawrenceburg[[65]](#footnote-65) and $13,228,114 for OVEC.***[[66]](#footnote-66) | ***FAC also recovers $61,136,019.53 related to Lawrenceburg[[67]](#footnote-67) and $13,295,243 for OVEC***.[[68]](#footnote-68) |
|  |  |
| **OPCo Capacity Formula Components** | **OPCo Double Recovery of Purchased Power in FAC** |
| OPCo’s Annual Fixed Production Costs for 2010 was $660,504,310.[[69]](#footnote-69) |  |
| The Annual Fixed Production Costs consisted of $338,656,260 in O&M expense.[[70]](#footnote-70) |  |
| $59,290,595 of the O&M expense consisted of fixed (demand) purchased power costs.[[71]](#footnote-71) |  |
| ***Purchased power costs consisted of $46,149,435 for OVEC***.[[72]](#footnote-72) | ***FAC recovered $42,631,815 for OVEC***.[[73]](#footnote-73)  |

Because AEP-Ohio recovered more than its actual cost of non-fuel purchased power through the FAC in 2010 and 2011, IEU-Ohio urges the Commission to correct the double recovery as discussed below.

The ESP I Order included bill limits. Thus, the inclusion of excessive amounts in OPCo’s FAC contributed to the deferred balance that is currently subject to collection through the non-bypassable phase-in recovery rider (“PIRR”). IEU-Ohio urges the Commission to apply the double recovered amount ($87 million[[74]](#footnote-74)), with carrying charges, as a reduction to OPCo’s deferred balance. The Commission previously held that any credit to the deferred balance should include carrying charges on the credit at a WACC rate, because that rate was in effect when the deferred balance accumulated.[[75]](#footnote-75)

CSP no longer has a deferred balance to offset. Thus, IEU-Ohio urges the Commission to apply CSP’s $142 million double recovery ($26 million for OVEC and $116 million for Lawrenceburg), with carrying charges, as a reduction to CSP’s fuel costs in the next reconciliation adjustment.

## The Commission should direct AEP-Ohio to reduce the FAC through an adjustment to account for an allocation of demand related purchased power costs to off-system sales or the application of off-system sales margins of OVEC and Lawrenceburg to the FAC

Even if AEP-Ohio properly included non-fuel purchased power costs in the FAC, AEP-Ohio unjustly and unreasonably allocated purchased power costs to Ohio retail customers. The FAC allocates variable costs (fuel) between SSO sales and non-SSO sales.[[76]](#footnote-76) Thus, if a generating unit is not used for providing service to the SSO, AEP-Ohio does not allocate its fuel costs to the FAC.[[77]](#footnote-77) For example, in 2011, less than half of the OVEC units’ output was allocated to SSO sales.[[78]](#footnote-78) AEP-Ohio, however, does not allocate non-fuel purchased power costs between SSO and non-SSO sales.[[79]](#footnote-79) Rather, AEP-Ohio allocates all of the demand costs related to the Lawrenceburg and OVEC units to the FAC while using a significant portion of their output to make off-system sales. AEP-Ohio customers fully compensate AEP-Ohio for the demand cost of these units through FAC charges—as stated above, it appears that AEP-Ohio is receiving compensation for these costs twice. And, any margin on off-system sales flows directly to the bottom line of AEP-Ohio’s shareholder.[[80]](#footnote-80) With respect to OVEC, AEP-Ohio has claimed in its ESP III Application that the margin on those sales is significant, and, together with its market-based capacity revenue, may be sufficient to cover the entire fixed cost of the OVEC units.[[81]](#footnote-81)

Assuming that the Commission does not completely disallow recovery of these demand charges in the FAC, IEU-Ohio recommends that the Commission require AEP-Ohio to allocate the Lawrenceburg and OVEC demand charges between SSO and non-SSO sales in the same manner as fuel costs. It is unjust and unreasonable for SSO customers to fully compensate AEP-Ohio for the fixed costs of the Lawrenceburg and OVEC units while a large portion of their output is used to make off-system sales.

In the alternative, the Commission should require AEP-Ohio to offset the demand charges in the FAC for the off-system sales margins of the OVEC and Lawrenceburg generating units. The Commission’s rules regarding applications to establish an FAC require AEP-Ohio to offset costs collected through the FAC to be net of related benefits:

*The electric utility shall include in the application any benefits available to the electric utility as a result of or in connection with such costs including but not limited to* profits from emission allowance sales and *profits from resold coal contracts.[[82]](#footnote-82)*

The Commission applied this legal principle in the 2009 FAC Order and required AEP-Ohio to offset fuel costs for related benefits. The Commission held that “to determine the real economic cost of coal during the audit period, the Commission must consider both the revenues and the benefits received by the Companies pursuant to the Settlement Agreement and not rely solely on the price paid for coal during 2009.”[[83]](#footnote-83) Accordingly, AEP-Ohio’s real economic cost of purchased power is the costs associated with OVEC and Lawrenceburg net of all the revenue that AEP-Ohio received for OVEC and Lawrenceburg.

The ESP I Order does not permit AEP-Ohio to retain the off-system sales margins from OVEC and Lawrenceburg. Although the ESP I Order permits AEP-Ohio to retain off-system sales margins from its generation assets for its shareholder, OVEC and Lawrenceburg are not owned generating assets.[[84]](#footnote-84) Rather, and through AEP-Ohio’s FAC accounting, OVEC and Lawrenceburg give rise to purchased power costs that are flowed through the FAC. Because the Commission’s rules require AEP-Ohio to reduce any costs collected through the FAC for any related benefits, AEP-Ohio should be required to offset the demand charges flowed through the FAC for any related off- system sales margins.

While IEU-Ohio again urges the Commission to completely disallow AEP-Ohio’s double recovery of non-fuel purchased power costs through the FAC, at a minimum, the Commission should direct an FAC reconciliation adjustment to assign a portion of the demand charges to off-system sales or direct AEP-Ohio to reduce the demand charges for off-system sales margins from OVEC and Lawrenceburg. To reconcile the FAC charges, the Commission should direct OPCo to credit the over recovery to the deferred balance, and the Commission should direct CSP to provide a credit to the next FAC reconciliation adjustment.

Finally, if the Commission does not direct AEP-Ohio to assign a portion of the demand charges to off-system sales or direct AEP-Ohio to reduce the demand charges for off-system sales margins from OVEC and Lawrenceburg, IEU-Ohio urges the Commission to direct the next auditor to review AEP-Ohio’s allocation of 2010 and 2011 demand charges and provide a recommendation during the next audit report.

## The Commission should direct AEP-Ohio to account for the effect of ADIT in its carrying charge methodology

Financial Audit Recommendations 21 and 22 identified that AEP-Ohio has accumulated excessive carrying charges on the deferred balance that should be re-examined by the Commission.

21.AEP Ohio and the other parties to the case should re-examine whether the Commission authorized gross-of-tax WACC for debt and common equity capital should be applied to what such investors are actually financing of the fuel cost under-recovery balances, which would appear to be the Deferred Fuel amounts recorded in Account 1823144 less the directly related credit-balance ADIT-Other for Deferred Fuel recorded in Account 283.

22. The Company should address the income tax savings it was/is recording related to the under-recovered FAC balances, and how those provide non-investor supplied capital that is financing a portion of the Deferred Fuel balances that have been recorded in Account 1823144. The Company should specifically address the related credit-balance ADIT that is recorded in Account 283, ADIT-Other, for the tax savings-based financing that appears to be directly related to the under-recovered FAC balances.[[85]](#footnote-85)

Moreover, the 2010 Audit Report states:

The gross-of-tax WACC based on a combination of debt and common equity financing represents the cost of investor-supplied capital. As such, it should generally be applied only to the portion of the deferred cost that has been financed by investor-supplied capital. It would generally be a mismatch, and hence inappropriate, to apply such a gross-of-tax WACC to the portion of a deferred cost balance that has actually been financed with non-investor supplied cost-free capital in the form of credit-balance ADIT that is directly related to the cost deferral.[[86]](#footnote-86)

IEU-Ohio agrees that the Commission should re-examine the carrying cost methodology in these proceedings. More specifically, the Commission should direct AEP-Ohio to account for the benefit of ADIT in the carrying cost methodology.

As the 2010 and 2011 Audit Reports, the testimony of Joseph Bowser,[[87]](#footnote-87) and Daniel Duann[[88]](#footnote-88) indicate, a carrying charge is an interest component that allows a utility to obtain compensation for a delay in the collection of revenue authorized by the Commission. This carrying charge recognizes the time value of money.[[89]](#footnote-89)

When a utility is authorized to utilize deferral accounting for regulatory purposes, the utility delays recognition of an expense (the recognition is deferred).[[90]](#footnote-90) However, a deduction is nonetheless recognized on the federal income tax return (tax accounting). The tax accounting results in an immediate reduction to the utility’s federal income tax.[[91]](#footnote-91) The tax benefit is known as ADIT, and it provides a source of interest-free cash to the utility.[[92]](#footnote-92)

In the ESP I Order, the Commission authorized AEP-Ohio to collect a total revenue amount.[[93]](#footnote-93) Part of the revenue was collectible during the ESP period and part of the revenue was delayed for future collection in an amount to be determined by the Commission. For every $100 that was delayed for future collection, AEP-Ohio received a $35 immediate tax benefit (assuming a 35% statutory federal income tax rate) due to the timing difference between tax and regulatory accounting.[[94]](#footnote-94) The ADIT tax benefit increased AEP-Ohio’s cash flow by $35.[[95]](#footnote-95)

As the Auditor has noted repeatedly, the deferred amount provided a significant tax benefit that AEP-Ohio has failed to apply to reduce the carrying charges on the deferred balance. AEP-Ohio’s failure to adjust the carrying charges—which are then added to the deferred balance—violates State policy requiring that customers have access to reasonably priced electricity,[[96]](#footnote-96) precedent,[[97]](#footnote-97) and sound regulatory practices and principles that the carrying costs must be adjusted to reflect the ADIT benefit.[[98]](#footnote-98) IEU-Ohio urges the Commission to direct AEP-Ohio to accrue carrying charges with the ADIT adjustment from January 1, 2010 and forward.

## Issues Related to the *2009 FAC Case*

### The Commission should adopt Financial Audit Recommendation 7

The FAC Order initially directed AEP-Ohio to credit $71 million to the deferred balance. On rehearing, the Commission directed AEP-Ohio to credit the jurisdictional portion of the $71 million to the deferred balance. Financial Audit Recommendation 7 of the 2011 Audit Report recommends that “AEP Ohio's crediting of those clarified amounts against OPCO's FAC under-recovery should be reviewed in the next audit.”[[99]](#footnote-99) AEP-Ohio claims that “[r]espective credits have been booked in accordance with Commission orders and will be available for review by the Auditor. Consequently, this recommendation can be considered completed in the context of the 2011 Audit.”[[100]](#footnote-100) IEU-Ohio disagrees with AEP-Ohio’s assertion that the recommendation should be considered completed. The 2011 Audit Report ***did not review*** the credit and no party submitted evidence regarding the quantification of the credit in these proceedings. Moreover, the 2011 Audit Report proposed that the ***next audit report*** review and verify the Commission-ordered credit. Based upon the record evidence and the auditor’s recommendation, the recommendation cannot be considered completed; thus, the Commission should leave Financial Recommendation 7 open for additional consideration in AEP-Ohio’s next FAC audit report.

### The Commission should promptly appraise the Coal Reserve

The FAC Order determined that AEP overstated FAC costs in 2009 by excluding the value of the Coal Reserve. Moreover, the FAC Order determined that a request for proposals (“RFP”) would be issued by subsequent entry for the purpose of selecting and hiring an auditor to examine the value of the Coal Reserve. Because the Commission has not issued the RFP, the Commission has yet to provide customers relief from the excessive costs that AEP-Ohio flowed through the FAC during 2009. Depending on the findings under that future RFP with respect to the value of the Coal Reserve, there could be an additional reduction to the deferred balance in addition to the credit that the Commission ordered in the FAC Order. Such an adjustment would further reduce the total deferred balance to ultimately be recovered and result in reduced carrying charges and reduced PIRR rates. IEU-Ohio again urges the Commission to issue the RFP.

### The Commission should ensure that customers receive the customer-funded future below-market benefits that will accrue to AEP-Ohio after the FAC expires

The FAC Order recognized that AEP-Ohio passed higher fuel costs onto customers in 2009 in return for an option to purchase coal at a market discount during 2013 to 2018.[[101]](#footnote-101) The FAC Order determined that it would address this issue in a future audit report because the discount would accrue outside of the audit period under review. At the time of the FAC Order, however, it was not certain that AEP-Ohio would not have an FAC at the time AEP-Ohio received the discounted coal. Thus, there was a possibility that from 2013 to 2018 AEP-Ohio could potentially flow back the benefits of the below-market coal to customers. After December 31, 2014, however, AEP-Ohio has been ordered to initiate an energy only auction for the remaining five months of ESP II.[[102]](#footnote-102) It has proposed to provide an SSO that is based on an auction for all energy and capacity beginning on June 1, 2015 and to use the FAC to finally true up its remaining outstanding fuel costs.[[103]](#footnote-103) Based on the ESP II order and AEP-Ohio’s ESP III application, therefore, customers may never realize the benefit of the customer-funded discount unless the Commission adopts a mechanism to adjust current rates for the future expected benefits of the renegotiated contracts.

IEU-Ohio proposes two ways to ensure that SSO customers realize those benefits that would otherwise be lost. First, the Commission should direct AEP-Ohio to record a regulatory liability for the estimated value of the future customer benefits that will accrue from 2013 through 2018 and amortize the regulatory liability over the period that the benefits are realized.[[104]](#footnote-104) The amortization would first be made as reductions to the FAC rates as long as the FAC is in existence, then as reductions to another cost or a regulatory asset that the Commission deems appropriate.[[105]](#footnote-105)

Alternatively, IEU-Ohio proposes that the Commission direct AEP-Ohio to flow through as a reconciliation adjustment to the FAC the net present value of the below market discount that will accrue to AEP-Ohio after AEP-Ohio no longer charges fuel costs to retail customers.

If the Commission does not adopt either of the above proposals then, alternatively, IEU-Ohio recommends that the Commission revisit this issue in the next FAC audit proceeding for the purpose of putting in place a mechanism to assure that customers receive the benefits of the customer-funded discount.

# Conclusion

For the reasons stated herein, IEU-Ohio urges the Commission to correct AEP-Ohio’s double recovery of purchased power costs, with carrying charges during 2010 and 2011. Moreover, IEU-Ohio urges the Commission to direct AEP-Ohio to accrue carrying charges on the deferred balance reduced for the effect of ADIT. Finally, IEU-Ohio urges the Commission to address unresolved issues from the audit of the *2009 FAC Case*.

Respectfully submitted,

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1. *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters for 2009*, Case Nos. 09-872-EL-FAC, *et al.*, Entry on Rehearing at 5 (Apr. 11, 2012) (hereinafter referred to as the *"2009 FAC Case")*. *See also 2009 FAC Case*, Opinion and Order at 13 (Jan. 23, 2012) (hereinafter “FAC Order”). [↑](#footnote-ref-1)
2. *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan, and the Sale or Transfer of Certain Generating Assets,* Case Nos. 08-917-EL-SSO*, et al.,* Opinion and Order (Mar. 18, 2009) (hereinafter referred to as *"ESP I"* and the Opinion and Order is referred to as the, “ESP I Order”). [↑](#footnote-ref-2)
3. ESP IOrder at 22-23 (Mar. 18, 2009). [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. *Id.* at 24. [↑](#footnote-ref-5)
6. EVA subcontracted a portion of the review of the FAC to Larkin Associates. IEU-Ohio will refer to findings and testimony of EVA and Larkin Associates as the Auditor or EVA. [↑](#footnote-ref-6)
7. *2009 FAC Case*, FAC Order at 4-5 (Jan. 23, 2012). [↑](#footnote-ref-7)
8. Only a portion of the $30 million has been flowed back to ratepayers. *Id.* at 12. [↑](#footnote-ref-8)
9. *2009 FAC Case*,FAC Order at 12 (Jan. 23, 2012). [↑](#footnote-ref-9)
10. *Id.* at 5-6. [↑](#footnote-ref-10)
11. *Id.* at 13. [↑](#footnote-ref-11)
12. *2009 FAC Case*, FAC Order at 12 (Jan. 23, 2012). [↑](#footnote-ref-12)
13. *2009 FAC Case*, Entry on Rehearing at 6 (Apr. 11, 2012). [↑](#footnote-ref-13)
14. Case Nos. 11-281-EL-FAC, *et al.*, Report of the Management Performance and Financial Audits of the FAC of the Columbus Southern Power Company and the Ohio Power Company at 1-10 (May 24, 2012) (hereinafter “2011 Audit Report”). [↑](#footnote-ref-14)
15. *2009 FAC Case*, FAC Order at 9, 14 (Jan. 23, 2012). [↑](#footnote-ref-15)
16. *Id.* at 14. [↑](#footnote-ref-16)
17. *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 Nos. 11-346-EL-SSO*, et al*., Opinion and Order at 39-40 (Aug. 8, 2013) (hereinafter “*ESP II Case*”). [↑](#footnote-ref-17)
18. At the request of AEP-Ohio and intervenors, the FAC cases did not proceed to hearing so that parties could focus on litigating issues related to AEP-Ohio’s second ESP and AEP-Ohio’s request for authority to invent and apply a cost-based ratemaking methodology to increase its capacity compensation. [↑](#footnote-ref-18)
19. Case Nos. 10-268-EL-FAC, *et al.* Report of the Management Performance and Financial Audits of the FAC of the Columbus Southern Power Company and Ohio Power Company at 1-10, (May 26, 2011) (hereinafter “2010 Audit Report”). *See also* *id.* at 7-81 to 7-84. 2011 Audit Report at 1-8 to 1-10 (May 24, 2012). *See id.* at 7-97 to 7-102.  [↑](#footnote-ref-19)
20. *In the Matter of the Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support Its Standard Service Offer*, Case No. 12-3254-EL-UNC, Opinion and Order at 16 (Nov. 13, 2013) (hereinafter “*CBP Case*”); *see also CBP Case,* Concurring Opinion of Commissioners Lesser and Trombold at 1. [↑](#footnote-ref-20)
21. *Id.*  [↑](#footnote-ref-21)
22. IEU-Ohio Ex. 2; IEU-Ohio Ex. 4; IEU-Ohio Ex. 5; IEU-Ohio Ex. 6. OPCo flowed $42,631,815 through the FAC in 2010 (IEU-Ohio Ex. 5) and $44,451,633 through the FAC in 2011 (IEU-Ohio Ex. 6.). [↑](#footnote-ref-22)
23. CSP recovered 100% of the Lawrenceburg depreciation and capacity charges (demand charges) through the FAC (approximately $35 to $36 million per year). IEU-Ohio Ex. 1-4. CSP also recovered operation and maintenance (“O&M”) expense and tax through the FAC, but allocated those charges between SSO and non-SSO sales. IEU-Ohio Ex. 2 and 4. CSP allocates O&M and tax to the FAC only for kilowatt hours that were allocated to the FAC using AEP-Ohio’s jurisdictional allocation process. CSP allocated approximately 87% of those charges to the FAC in 2010 ($22 million) and 88% of those charges to the FAC in 2011 ($24 million). *See* IEU-Ohio Ex. 13 at 1-2 to 1-5; IEU-Ohio Ex. 1-4. [↑](#footnote-ref-23)
24. Tr. at 160. *See also* IEU-Ohio Ex. 14. [↑](#footnote-ref-24)
25. Tr. at 160. [↑](#footnote-ref-25)
26. IEU-Ohio Ex. 14 at 41 of 115; Tr. at 161-64. [↑](#footnote-ref-26)
27. Tr. at 139. As a result of OPCo’s wholesale contract with Wheeling Power, OPCo allocates approximately 92% of the OVEC demand charges to the FAC. Tr. at 179. [↑](#footnote-ref-27)
28. Tr. at 134. [↑](#footnote-ref-28)
29. Tr. at 133-139. *See also* IEU-Ohio Ex. 13 at 1-2 to 1-5, 1-8, 1-9, 1-11, 1-12. [↑](#footnote-ref-29)
30. Tr. at 134,139. [↑](#footnote-ref-30)
31. Tr. at 134, 135, 137. [↑](#footnote-ref-31)
32. Tr. at 53. *See also id.* at 49-53. [↑](#footnote-ref-32)
33. Tr. at 53, 65; Tr. at 189-90; Tr. at 194-95. [↑](#footnote-ref-33)
34. Tr. at 54-63 (IEU-Ohio Ex. 7-12). [↑](#footnote-ref-34)
35. IEU-Ohio Ex. 10-12. [↑](#footnote-ref-35)
36. IEU-Ohio Ex. 7-9. [↑](#footnote-ref-36)
37. Tr. at 64. [↑](#footnote-ref-37)
38. *Id.*  [↑](#footnote-ref-38)
39. Tr. at 67-68 (emphasis added). Mr. Smith further stated,“I think I would agree with that, and I am aware of the statement to that effect in the current opinion, the order that was just released last week. That seems like an appropriate way of dealing with it; direct a future auditor to review it in a subsequent round of FAC audits.” Tr. at 68-69. [↑](#footnote-ref-39)
40. Tr. at 53. *See also id.* at 49-53. [↑](#footnote-ref-40)
41. *Id.*  [↑](#footnote-ref-41)
42. R. Evid. 611(B). [↑](#footnote-ref-42)
43. Although the Commission is not bound by the Ohio Rules of Evidence, they provide a useful guide to addressing evidentiary issues. [↑](#footnote-ref-43)
44. R. Evid. 402. [↑](#footnote-ref-44)
45. R. Evid. 401. [↑](#footnote-ref-45)
46. *See In the Matter of the Application of Columbus Southern Power Company Update its gridSMART Rider*,Case No. 11-1353-EL-RDR, Opinion and Order at 4-5 (Aug. 24, 2011). [↑](#footnote-ref-46)
47. *In the Matter of the Application of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 11-5906-EL-FAC, *et al.*, Entry at 3-4 (Dec. 4, 2013) (emphasis added). [↑](#footnote-ref-47)
48. IEU-Ohio Ex. 10-12. *See also* *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, Opinion and Order at 25 (Jul. 2, 2012). This case is hereinafter referred to as the “*Capacity Case*” and the Opinion and Order is hereinafter referred to as the “Capacity Case Order.” [↑](#footnote-ref-48)
49. IEU-Ohio Ex.7-9. *See also* Capacity Case Order at 24-36. [↑](#footnote-ref-49)
50. IEU-Ohio Ex. 1-6. [↑](#footnote-ref-50)
51. The testimony of witness Lesser was offered by AEP-Ohio, but IEU-Ohio does not offer that exhibit to demonstrate the truth of the matter asserted. Rather, IEU-Ohio offered the testimony of witness Lesser to put AEP-Ohio witness Allen’s rebuttal testimony (which responded to witness Lesser’s testimony) in context. Moreover, the fact that AEP-Ohio’s *ESP I* base generation rates produce revenue equivalent to $355 per megawatt day has been recognized by the Commission. Capacity Case Order at 25. [↑](#footnote-ref-51)
52. Additionally, there is no legitimate objection that the exhibits should be excluded on the basis of hearsay. Under R. Evid. 802(2), the proffered exhibits are considered “non-hearsay” and are admissible as admissions by a party opponent: “The statement is offered against a party and is (a) the party’s own statement, in either an individual or a representative capacity. . . .” Each of the proffered exhibits were sponsored by AEP-Ohio witnesses; thus, they are admissions by representatives of AEP-Ohio. [↑](#footnote-ref-52)
53. *See In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No 12-1230-EL-SSO, Opinion and Order at20-21 (Jul. 18 2012). [↑](#footnote-ref-53)
54. IEU-Ohio Ex. 1-6. [↑](#footnote-ref-54)
55. Information on the Commission’s website indicates that CRES providers only negligibly impacted AEP-Ohio’s sales during 2010 and 2011.

http://www.puco.ohio.gov/emplibrary/files/util/MktMonitoringElecCustSwitchRates/SWITCH%20RATES%20SALES/2010/4Q%202010%20Prelim.pdf. *See also http://www.puco.ohio.gov/emplibrary/files/util/MktMonitoringElecCustSwitchRates/SWITCH%20RATES%20SALES/2011/4Q2011.pdf.* Moreover, for June 1, 2011 to December 31, 2011, AEP-Ohio received compensation from CRES providers equivalent to $220 per megawatt day for capacity service. Capacity Case Order at 10. [↑](#footnote-ref-55)
56. IEU-Ohio Ex. 8 & 9. [↑](#footnote-ref-56)
57. IEU-Ohio Ex. 7. *See also* Capacity Case Order at 24-25. [↑](#footnote-ref-57)
58. IEU-Ohio Ex. 7 at KDP-3, p. 14, column 2, line 11; IEU-Ohio Ex. 7 KPD-4, p. 14, column 2, line 11; IEU-Ohio Exhibit 9 at 326-327, Line 1; IEU-Ohio Exhibit 9 at 326.3-327.3, Line 2; IEU-Ohio Ex. 8 at 326.3-327.3, Line 2. [↑](#footnote-ref-58)
59. Capacity Case Order at 25-30; 33-36. The Commission relied on EVA witness Smith, one of the auditors in this proceeding, to calculate the energy credit. [↑](#footnote-ref-59)
60. *Id.*  [↑](#footnote-ref-60)
61. IEU-Ohio Ex. 1-6. [↑](#footnote-ref-61)
62. IEU-Ohio Ex. 7 at KDP-3, Page 2. [↑](#footnote-ref-62)
63. IEU-Ohio Ex. 7 at KDP-3, Page 4 (Line 2). [↑](#footnote-ref-63)
64. IEU-Ohio Ex. 7 at KDP-3, Page 14 (Line 11, Column 2). [↑](#footnote-ref-64)
65. IEU-Ohio Exhibit 9 at 326-327, Line 1. [↑](#footnote-ref-65)
66. IEU-Ohio Exhibit 9 at 326.3-327.3. [↑](#footnote-ref-66)
67. IEU-Ohio Ex. 1. CSP’s response may marginally overstate the amount of non-fuel costs AEP-Ohio recovered through the FAC, as CSP allocated operation and maintenance expenses and taxes between SSO and non-SSO sales. *See* IEU-Ohio Ex. 2; IEU-Ohio Ex. 4. This allocation, however, only affects accounts 5550046, 5500586, and 5550087 and reduces the amount of these accounts allocated to the FAC by approximately 12 percent. IEU-Ohio Ex. 13 at 1-2 to 1-5; IEU-Ohio Ex. 2 and 4. The allocation process does not impact the $36 million in depreciation and capacity costs that CSP allocated to the FAC. Tr. at 134. In total, CSP allocated approximately $58 million to the FAC related to Lawrenceburg for each year. IEU-Ohio Ex. 1 and 3. *See also* IEU-Ohio Ex. 13 at 1-2 to 1-5. [↑](#footnote-ref-67)
68. IEU-Ohio Ex. 5. [↑](#footnote-ref-68)
69. IEU-Ohio Ex. 7 at KDP-4, Page 2. [↑](#footnote-ref-69)
70. IEU-Ohio Ex. 7, KDP-4, Page 4 (Line 2). [↑](#footnote-ref-70)
71. IEU-Ohio Ex. 7, KDP-4, Page 14 (Line 11, Column 2). [↑](#footnote-ref-71)
72. IEU-Ohio Ex. 8 at 326.3-327.3. [↑](#footnote-ref-72)
73. IEU-Ohio Ex. 5. The difference between the FAC recovery and capacity formula is related to OPCo’s allocation of purchased power costs to Wheeling Power. Tr. at 179. AEP-Ohio recovered $44,451,633 for OVEC through the FAC in 2011. IEU-Ohio Ex. 6. [↑](#footnote-ref-73)
74. OPCo allocated $42.5 million in OVEC demand charges to the FAC in 2010 and $44.5 million in 2012. IEU-Ohio Ex. 5 and 6. [↑](#footnote-ref-74)
75. *2009 FAC Case*, Entry on Rehearing at 9 (Apr. 11, 2012). Carrying charges accrued at a debt rate for the period after the PIRR went into effect. *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code*, Case Nos. 11-4920-EL-UNC, *et al.*, Finding and Order at 18 (Aug. 1, 2012). [↑](#footnote-ref-75)
76. Tr. at 26, 129, 168-169. [↑](#footnote-ref-76)
77. *Id.*  [↑](#footnote-ref-77)
78. Tr. at 173-174; Tr. at 138-139; IEU-Ohio Ex. 13 at 1-11 & 1-12. [↑](#footnote-ref-78)
79. Tr. at 134, 139. [↑](#footnote-ref-79)
80. Tr. at 134, 135, 137. [↑](#footnote-ref-80)
81. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer, Pursuant to §4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.*, Direct Testimony of William Allen at 8, 11 (Dec. 20, 2013) (hereinafter “*ESP III*”). [↑](#footnote-ref-81)
82. Rule 4901:1-35-03(C)(9)(a), OAC (emphasis added). *See also 2009 FAC Case*,FAC Order at 12 (Jan. 23, 2012); Entry on Rehearing at 5, 7 (Apr. 11, 2012). [↑](#footnote-ref-82)
83. *2009 FAC Case*, FAC Order at 13. [↑](#footnote-ref-83)
84. ESP I Order at 16-17 (Mar. 18, 2009). [↑](#footnote-ref-84)
85. 2010 Audit Report at 1-10, (May 26, 2011). *See also* *id.* at 7-81 to 7-84. 2011 Audit Report at 1-8 to 1-10 (May 24, 2012). *See id.* at 7-97 to 7-102.  [↑](#footnote-ref-85)
86. 2010 Audit Report at 7-82 to 7-83. The 2010 Audit Report further states:

AEP Ohio is applying the monthly debt and pre-tax equity cost rates to under-recovered fuel balances in Account 1823144 without any offset for related credit-balance ADIT it has recorded in Account 283, ADIT-Other. There would typically be credit-balance ADIT related to the fuel under-recoveries. Assuming that the Company's fuel costs are deducted currently for income tax purposes, the deferral of the under-recovery for regulatory accounting would create a temporary difference and a credit-balance ADIT would be recorded. The related tax deduction would essentially provide cost-free financing for a portion of the fuel cost under-recovery. The ADIT is a source of non-investor supplied cost-free capital. Such ADIT is not being deducted from the under-recovered fuel balances in Account 1823144 in AEP Ohio's carrying cost calculations. If the ADIT balance related to the Company's FAC under-recovery balances is not considered, or deducted somewhere else, such as in rate base, ratepayers would be over-paying carrying costs by paying for carrying costs on the portion of the Deferred Fuel balance that has been financed by tax savings, i.e., on the portion not financed with investor-supplied capital. Unless the ADIT related to the under-recovered fuel balances is being recognized somewhere else in the ratemaking process, the pre-tax WACC should be getting applied to an Under-recovered fuel balances that is net of the related credit-balance ADIT, not to the gross Under-recovered balance.

*Id.* at 7-83 (footnotes omitted). [↑](#footnote-ref-86)
87. IEU-Ohio Ex. 15 at 4-10. [↑](#footnote-ref-87)
88. Office of Ohio Consumers’ Counsel Ex. 1 at 10-12. [↑](#footnote-ref-88)
89. IEU-Ohio Ex. 4 at 7-8. [↑](#footnote-ref-89)
90. *Id.* [↑](#footnote-ref-90)
91. *Id.*  [↑](#footnote-ref-91)
92. 2010 Audit Report at 7-82 to 7-83; IEU-Ohio Ex. 15 at 7-8; Office of Ohio Consumers’ Counsel Ex. 1 at 10-12. [↑](#footnote-ref-92)
93. ESP IOrder at 22-23 (Mar. 18, 2009). [↑](#footnote-ref-93)
94. IEU-Ohio Ex. 4 at 7-8. [↑](#footnote-ref-94)
95. *Id.*  [↑](#footnote-ref-95)
96. R.C. 4928.02(A). [↑](#footnote-ref-96)
97. Precedent holds that tax benefits available to a utility must be recognized in customer rates; otherwise, the utility will be overcompensated. *Cleveland Electric v. Pub. Util. Comm’n*, 12 Ohio St.3d 320, 323 (1984) (holding that “the opinion and order is not only supported by the record, but it also remains consistent with the commission’s policy regarding the pass-through of tax benefits to either present or future customers, depending on the circumstances presented.”); *Ohio Bell Tel. v. Pub. Util. Comm.*, 68 Ohio St.2d 193, 194 (1981); *Cincinnati Gas and Electric v. Pub. Util. Comm’n*, 173 Ohio St. 473, 473-476 (1962); *see also Cincinnati v. Pub. Util. Comm’n*, 161 Ohio St. 395, 405-06 (1954). *See also ESP II Case*, Opinion and Order at 47 (Aug. 8, 2012). [↑](#footnote-ref-97)
98. The carrying cost methodology is currently on appeal to the Supreme Court of Ohio (“Court”). *Ohio Power Company v. Pub. Util. Comm’n*,Sup. Ct. Case No. 2012-2008. [↑](#footnote-ref-98)
99. 2011 Audit Report at 1-10 (May 24, 2012). [↑](#footnote-ref-99)
100. AEP-Ohio Ex. 2 at 7. [↑](#footnote-ref-100)
101. *2009 FAC Case*, FAC Order at 9, 14 (Jan. 23, 2012). [↑](#footnote-ref-101)
102. *ESP II Case*,Opinion and Order at 39-40 (Aug. 8, 2013). [↑](#footnote-ref-102)
103. *See* *ESP III*, Direct Testimony of Andrea Moore at 4 (Dec. 20, 2013). [↑](#footnote-ref-103)
104. *See* IEU-Ohio Ex. 15 at 13-14. [↑](#footnote-ref-104)
105. *Id.*  [↑](#footnote-ref-105)