BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.	)	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.	)	Case No. 08-918-EL-SSO

ENTRY ON REHEARING

The Commission finds:

(1) On July 31, 2008, The Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. The application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.

(2) On March 18, 2009, the Commission issued its opinion and order (Order) in these matters approving, with modifications, AEP-Ohio's proposed ESP. On March 30, 2009, the Commission amended, nunc pro tunc, its Order.

(3) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(4) On April 16, 2009, Ohio Energy Group (OEG) and Industrial Energy Users-Ohio (IEU) each filed applications for rehearing. Applications for rehearing were also filed by the Office of the Ohio Consumers' Counsel (OCC); Ohio Association of School Business Officials, Ohio School Boards Association, and Buckeye Association of School Administrators (collectively, Schools); Ohio Hospital Association (OHA); Ohio

Manufacturers' Association (OMA); Kroger Company (Kroger); and AEP-Ohio on April 17, 2009. Memoranda contra the various applications for rehearing were filed by Kroger, OCC, AEP-Ohio, IEU, OEG, Integrys Energy Service, Inc. (Integrys), and Ohio Partners for Affordable Energy (OPAE). In their applications for rehearing, the various intervenors raised a number of assignments of error, alleging that the Order is unreasonable and unlawful.

(5) By entry dated May 13, 2009, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing. In this entry, the Commission will address the assignments of error by subject matter as set forth below.

(6) The Commission has reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission and are being denied.

(7) IEU filed a motion for immediate relief from electric rate increases on April 20, 2009, and AEP-Ohio filed a memorandum contra on April 23, 2009. IEU filed a reply on April 24, 2009. Further, on June 5, 2009, OCC, OMA, Kroger, and OEG filed a motion for a refund to AEP-Ohio's customers and a motion for AEP-Ohio to cease and desist future collections related to its arrangement with Ormet Primary Aluminum Corporation (Ormet) from its customers. AEP-Ohio and Ormet filed memoranda contra the motions on June 12, 2009, and June 23, 2009, respectively, and the movants replied on June 17, 2009, and June 30, 2009. OCC also indicates in its application for rehearing that it is seeking rehearing on the two March 30, 2009, orders issued by the Commission, which includes the Entry Nunc Pro Tunc that amended the Order in this proceeding, as well as the order issued denying a motion for a stay. The Commission will address the substance of all of the motions, and all responsive pleadings, within our discussion of and decision on the merits of the applications for rehearing as set forth below. Accordingly, with the consideration herein of the issues raised in the motions, the motions are granted or denied as discussed herein.

I. GENERATION

A. Fuel Adjustment Clause (FAC)

(8) AEP-Ohio asserts that limiting the FAC to only three years (the term of the ESP) is unreasonably restrictive (Cos. App. at 37-38). AEP-Ohio argues that it is unreasonable to allow the FAC to expire given that a FAC may be required in a future SSO established in accordance with Section 4928.141, Revised Code.

(9) IEU and OCC disagree with AEP-Ohio and submit that there is no valid reason for the FAC mechanism to extend beyond the life of the ESP (IEU Memo Contra at 13; OCC Memo Contra at 6-7).

(10) The Commission finds that AEP-Ohio's argument lacks merit, and therefore AEP-Ohio's rehearing request on this ground should be denied. The Commission limited the authorized FAC mechanism, established as part of the proposed ESP, to the term of the ESP approved by the Commission. If a FAC mechanism is proposed in a subsequent SSO application filed pursuant to Section 4928.141, Revised Code, the Commission will determine the appropriateness of the SSO proposal, including all of its terms, at that time. It is unnecessary, at this time, to extend this provision of the ESP beyond the term of the approved ESP.

1. FAC Costs

(a) Off-System Sales (OSS)

(11) OCC contends that the Commission erred by not crediting customers for revenues from OSS and for not following its own precedent (OCC App. at 16). OCC relies on past Commission decisions concerning electric fuel clause (EFC) proceedings.

(12) IEU also disagrees with the exclusion of an offset to the FAC costs for revenues associated with OSS, claiming that the Commission did not explain the basis for its decision (IEU App. at 11).

(13) AEP-Ohio notes that OCC's arguments were already rejected by the Commission in its Order, and that the Commission's decision is not inconsistent with any of its precedents regarding the sharing of profits from OSS between a utility and its customers (Cos. Memo Contra at 40). AEP-Ohio distinguishes previous EFC proceedings from proceedings filed pursuant to SB 221.

(14) The Commission first explains that this is not an EFC proceeding. While some aspects of the automatic recovery mechanism contained in Section 4928.143(B)(2)(a), Revised Code, may be analogous to the EFC mechanism, the statutory provisions regarding the EFC were repealed many years ago. Thus, OCC's cited precedent is irrelevant to our ruling in this case with respect to the OSS. Secondly, contrary to IEU's assertion, the Commission has already fully considered and addressed, in the Order at pages 16-17, all of the arguments raised on rehearing by OCC, as well as those raised by other intervenors in the proceeding. The Commission explained that Section 4928.143(B)(2)(a), Revised Code, specifically provides for the automatic recovery, without limitation, of certain prudently incurred costs: the cost of fuel used to generate the electricity supplied under the SSO; the cost of purchased power supplied under the SSO, including the cost of energy and capacity and power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes. Given that OCC and IEU have failed to raise any new arguments regarding this issue, rehearing on these grounds should be denied. However, we emphasize that FAC costs are to continue to be allocated on a least cost basis to POLR customers and then to other types of sale customers. Allocating the lowest fuel cost to POLR service customers is consistent with the electric utilities' obligation to POLR customers and will minimize the burden on most ratepayers.

2. <u>FAC Baseline</u>

(15) OCC's first assignment of error is that the Commission's adoption of the FAC baseline was not based on actual data in the record, and that the Company bears the burden of creating such a record in order to collect fuel costs pursuant to Section 4928.143(B)(2)(a), Revised Code (OCC App. at 12). OCC

recognizes that an ESP may recover the costs of fuel, but argues that these costs must be "prudently incurred" (Id.). OCC adds that "[t]he clear language [of SB 221] must be read to include recovery of only actual costs as anything more would not be prudent to recover from customers" (Id.). Nonetheless, OCC then admits that the actual 2008 fuel costs were not known at the time of the hearing,[1] but requests that the Commission order the Companies to produce actual fuel costs for 2008, after the record of the case has been closed, for purposes of establishing the baseline. Thus, OCC would have the Commission do exactly what its first assignment of error is criticizing the Commission's order for doing, which is use data that is not in the record.

(16) Similarly, IEU argues that, based on information and reports that have been subsequently developed and filed in other jurisdictions, Staff's methodology was incorrect. Therefore, IEU requests that the Commission adopt a methodology that sets the baseline based on 2008 actual costs (IEU App. at 12-13).

(17) AEP-Ohio responds that the Commission's decision must be based on the record before it and it is not feasible to do what OCC and IEU request (Cos. Memo Contra at 39). Nonetheless, AEP-Ohio states that, even if the 2008 data was available in the record, it would be inappropriate to use absent substantial adjustments due to the volatility of fuel costs in 2008 and the extraordinary procurement activities that occurred (Id., citing Cos. Ex. 7B at 2-3; Tr. XIV at 74-75).

AEP-Ohio further argues that the Commission's modification of the Companies' baseline contained in its proposed ESP was unreasonable. AEP-Ohio argues that its methodology was the appropriate methodology because its methodology identifies the portion of the 2008 SSO rate that correlates to the new FAC rate, and is not a proxy for 2008 fuel costs (Cos. App. at 38-39). OCC disagrees and urges the Commission to reject AEP-Ohio's methodology, as well as Staff's, and adopt the actual 2008 fuel costs (OCC Memo Contra at 8).

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1 We will assume that OCC's reference to 2009 actual data was a typographical error and the reference should be to 2008 (see OCC App. at 13).

(18) As explained in the Order, the actual 2008 fuel costs were not known at the time of the hearing (Order at 19, citing OCC Ex. 10 at 14). Therefore, based on the evidence presented in the record, the Commission determined that a proxy should be used to calculate the appropriate baseline. After making this determination, the Commission reviewed all evidence in the record and all parties' arguments, and adopted Staff's methodology and resulting value as the appropriate FAC baseline. AEP-Ohio, OCC, and IEU have raised no new arguments regarding this issue. Accordingly, rehearing on this ground is denied.

3. FAC Deferrals

(19) OCC argues that the Commission erred by not requiring deferrals and carrying costs to be calculated on a net-of-tax basis, and the Commission's reliance on Section 4928.144, Revised Code, was misplaced because the FAC deferral approved by the Commission is not a phase-in of rates authorized by SB 221 (OCC App. at 14). The Schools, however, conclude that the Commission exercised its authority pursuant to Section 4928.144, Revised Code, when it found that AEP-Ohio should phase-in any authorized increases, and that those amounts over the allowable increase percentage levels would be deferred pursuant to Section 4928.144, Revised Code, with carrying costs (Schools App. at 4). Notwithstanding the Commission's statutory authority to phase-in increases through deferrals, the Schools assert that School Pool participants who buy generation service from competitive retail electric service (CRES) providers should receive a credit on their bills during the ESP equal to the fuel that is being deferred (even though FAC deferrals will not be recovered via an unavoidable surcharge until 2012, if necessary) (Id. at 5). The Schools rationalize that any other outcome would violate the policy of the state, specifically Section 4928.02(H), Revised Code (Id. at 6).

(20) OCC also argues that the Commission failed to follow its own precedent and that deferrals are incompatible with Section 4928.143(B)(2)(d), Revised Code, inasmuch as the deferrals destabilize customer prices, introduce uncertainty, and are unfair and unreasonable (OCC App. at 14, 42-44). OCC recognizes that SB 221 allows deferrals under an ESP, but states

that those deferrals are limited to those that stabilize or provide certainty (Id. at 42). OCC explains that deferrals will cause future rate increases and add carrying costs to the total amount that customers will pay. OCC adds that the record is void of any projection that electric rates will decrease following the ESP period, and, therefore, concludes that the deferrals will have a de-stabilizing effect on customers' electric bills beginning in 2012 (Id. at 42-43). The Commission notes that based on its analysis of the Companies' ESP, as approved in the Order and modified in this entry on rehearing, our projections indicate that deferred fuel cost will likely be fully amortized by the end of this ESP for CSP and within two to three years after the end of this ESP for OP.

(21) OCC further contends that the use of a weighted average cost of capital (WACC) to calculate the carrying costs associated with the FAC deferrals is unreasonable and will result in excessive payments by customers. OCC asserts that the carrying charges should instead be based on the actual financing required to carry the deferrals during the short-term period (Id. at 45).

(22) IEU submits that the Commission failed to require AEP-Ohio to limit the total bill increases to the percentage amounts specified in the Order (IEU App. at 40).

(23) AEP-Ohio supports the Commission's decision authorizing FAC deferrals, with carrying costs, and contends that the authorized phase-in of rate increases, and associated FAC deferrals, comply with Section 4928.144, Revised Code, and are compatible with Section 4928.143(B)(2)(d), Revised Code (Cos. Memo Contra at 42). AEP-Ohio also supports the use of WACC, rather than a short-term debt interest rate, given that the period of cost deferrals and their subsequent recovery will take place over the next ten years (Id. at 43).

(24) AEP-Ohio, however, argues that the Commission's adjustment to its phase-in proposal and 15 percent cap on the ESP rate increases were unreasonable, disrupting the balance between up-front revenue recovery and subsequent recovery of deferrals (Cos. App. at 12). To this end, AEP-Ohio contends that the Commission's authority under Section 4928.144, Revised Code, "must be exercised in the total context of Chapter 4928, Ohio

Rev. Code, particularly in the context of the standard for approval of an ESP without modification" (Id., n.6). AEP-Ohio adds that the Commission's modification of its 15 percent cap was "too severe," and requests that the Commission rebalance the amount of the authorized increases and the size of the deferrals to reflect, at a minimum, annual 10 percent increases during the ESP term (Id. at 12-13). While agreeing with AEP-Ohio that the Order is unjust and unreasonable, IEU disagrees that the balance favors customers. IEU argues that the Commission's imposition of limits on the total percentage increases on customers' bills has not been followed (IEU Memo Contra at 8-9).

(25) Furthermore, AEP-Ohio requests that, if the Commission does not modify the total percentage increases allowed, the Commission should clarify the intended scope of the limitations that it has imposed, and specify that the 15 percent cap does not include revenue increases associated with a distribution base rate case or the revenues associated with the Energy Efficiency and Peak Demand Reduction Cost Recovery (EE/PDR) Rider (Cos. App. at 13). OEG supports AEP-Ohio's clarification, while IEU urges the Commission to reject AEP-Ohio's requested clarification, and find that the limitations on the percentage increases imposed by the Commission in the Order apply on a total bill basis (OEG Memo Contra at 3; IEU Memo Contra at 9).

(26) Section 4928.144, Revised Code, authorizes the Commission to order any just and reasonable phase-in of any electric utility rate or price established pursuant to an ESP, with carrying charges, and requires that any deferrals associated with the authorized phase-in be collected through an unavoidable surcharge. The Commission continues to believe that a phase-in of the ESP increases, as authorized by Section 4928.144, Revised Code, is necessary to ensure rate or price stability and to mitigate the impact on customers. We further believe that our established limits on the total percentage increases on customers' bills in each year were just and reasonable and remain appropriate. Nonetheless, upon further review of the workpapers filed with the tariffs and the comments received from parties concerning the practical application of the total percentage increases on customers' bills, it has come to the Commission's attention that the Companies included in the total allowable revenue increase

an amount that equals the revenue shortfall associated with their joint service territory customer, Ormet. In their calculation, the Companies assumed that the joint service territory customer would continue paying the amount that it was paying on December 31, 2008 (established pursuant to a prior settlement), which was above the approved tariff rate for that rate schedule. Instead, the Companies should have calculated the allowable total revenue increase based on that customer paying the December 31, 2008, approved tariff rate for its rate schedule. Additionally, the Companies' calculation should have been levelized and not reflected any variations in customers' bills for tariff/voltage adjustments. Accordingly, we direct the Companies to recalculate the total allowable revenue increase approved by our Order issued on March 18, 2009, as clarified by the Entry Nunc Pro Tunc issued on March 30, 2009, and as modified herein, and file revised tariffs consistent with such calculation.

(27) Additionally, the Commission clarifies that the Transmission Cost Recovery (TCR) rider should not impact the allowable total percentage increase. As approved in the Order, the TCR rider will continue to be a pass-through of actual transmission costs incurred by the Companies that is reconciled quarterly. Similarly, any future adjustments to the EE/PDR Rider are excluded from the allowable total percentage increases. As explained in the Order, the EE/PDR Rider was designed to recover costs associated with the Companies' implementation of energy efficiency programs that will achieve energy savings and peak demand programs designed to reduce the Companies' peak demand pursuant to Section 4928.66, Revised Code (Order at 41). The costs included in the EE/PDR Rider will be trued-up annually to reflect actual costs.

(28) We further clarify that the phase-in/deferral structure does not include revenue increases associated with any distribution base rate case that may occur in the future. Any distribution rates established pursuant to a separate proceeding, outside of an SSO proceeding, will be considered separately. Section 4928.144, Revised Code, authorizes phase-in of rates or prices established pursuant to Sections 4928.141 to 4928.143, Revised Code, not distribution rates established pursuant to Section 4909.18, Revised Code.

(29) With respect to OCC's and the Schools' issues regarding the FAC deferrals and carrying charges, we find that those issues were thoroughly addressed in our Order at pages 20-24, and that the parties have raised no new arguments regarding those issues. Accordingly, the Commission finds that rehearing on those assignments of error are denied.

(30) Similarly, the Commission finds that AEP-Ohio's arguments regarding its proposed 15 percent cap were fully addressed in our Order, and AEP-Ohio has raised no new arguments to support its position. Additionally, AEP-Ohio's alternative proposal of an annual 10 percent cap fails on similar grounds. The Companies have offered no justification or support for its adjusted proposal. As such, the Commission finds that rehearing on this ground is denied.

(31) With respect to the other assignments of error raised, the Commission emphasizes that it was the intent of our Order to phase-in the authorized increases and to limit the total percentage increases on customers' bills to an increase of 7 percent for CSP and 8 percent for OP for 2009, an increase of 6 percent for CSP and 7 percent for OP for 2010, and an increase of 6 percent for CSP and 8 percent for OP for 2011, as explained herein. To the extent that the Commission's intent was not memorialized in the Companies' tariffs, or the application of those tariffs, we grant rehearing to correct the errors or clarify our Order as delineated above.

B. Incremental Carrying Cost for 2001-2008 Environmental Investment and the Carrying Cost Rate

(32) In the Order, the Commission concluded that AEP-Ohio should be allowed to recover the incremental capital carrying costs that will be incurred after January 1, 2009, on past environmental investments (2001-2008) that are not presently reflected in the Companies' existing rates, as contemplated in AEP-Ohio's RSP Case. Further, the Commission found that the recovery of continuing carrying costs on environmental investments, based

on WACC, is consistent with our decision in the 07-63 Case[2] and the RSP 4 Percent Cases.[3] The Commission agreed with the rationale presented by the Companies that the levelized carrying cost rates were reasonable and should be approved.

(33) First, IEU argues that the Commission's decision fails to comply with the requirements of Section 4903.09, Revised Code, to sufficiently set forth the reasons prompting the Commission's decision based upon the findings of fact in regards to carrying costs and several other issues (IEU App. at 4-26).

(34) IEU and OCC argue that Section 4928.143(B)(2)(b), Revised Code, limits any allowance for an environmental expenditure or cost to those incurred on or after January 1, 2009. IEU and OCC interpret Section 4928.143(B)(2)(b), Revised Code, to only allow the electric utility to recover a reasonable allowance for construction work in progress for any of the electric utility's costs for environmental expenditures for any electric generating facility, provided the costs are incurred or the expenditures occur on or after January 1, 2009 (IEU App. at 14; OCC App. at 38-39). OCC argues, as it did in its brief,[4] that both divisions (B)(2)(a) and (B)(2)(b) of Section 4928.143, Revised Code, require an after-the-fact determination that the expenditures were prudent and are, therefore, inappropriate for the Commission's consideration in this ESP proceeding (OCC App. at 38). OCC contends that the Order failed to address whether it was proper under the statute to collect carrying costs on the environmental investment as the Commission merely accepted Staff's position (OCC App. at 38-39). OCC concludes that the prudence of the environmental investment should be examined in a subsequent proceeding.

(35) Further, IEU and OCC also claim that the Commission failed to calculate the carrying charges on the various types of special financing available to finance environmental or pollution control assets, including the cost of short-term debt, consistent

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2 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 07-63-EL-UNC, Opinion and Order (October 3, 2007) (07-63 Case).

3 *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 07-1132-EL-UNC, 07-1191-EL-UNC, and 07-1278-EL-UNC (RSP 4 Percent Cases).

4 OCC and the Sierra Club-Ohio Chapter joined together to file its brief in this matter and referred to themselves jointly as the Ohio Consumer and Environmental Advocates (OCEA).

with the Commission's rulings in other proceedings (IEU App. at 15; OCC App. at 46).[5]

(36) AEP-Ohio argues that to comply with the requirements of Section 4903.09, Revised Code, the Order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the Commission in reaching its conclusion.[6] Thus, AEP-Ohio concludes that as long as there is a basic rationale and record evidence supporting the Order, no violation of Section 4903.09, Revised Code, exists (Cos. Memo Contra at 8-9).[7]

(37) Further, AEP-Ohio argues that OCC is mischaracterizing the Companies' request for environmental carrying costs pursuant to Section 4928.143(B)(2)(b), Revised Code. AEP-Ohio argues that its requests for environmental carrying costs incurred during the ESP period are based on the broader language of Section 4928.143(B)(2), Revised Code. AEP-Ohio notes that Section 4928.143(B)(2), Revised Code, states that a company's ESP may provide for or include, without limitation, any of the provisions itemized in paragraphs (a) through (i) of Section 4928.143(B)(2), Revised Code (Cos. Memo Contra at 45-46).

(38) The Commission affirms its decision to permit AEP-Ohio to recover the carrying costs to be incurred after January 1, 2009, on environmental investments made prior to 2008. The Commission interprets Section 4928.143(B)(2), Revised Code, like the Companies, to permit AEP-Ohio to include as a part of its ESP the carrying costs on environmental investments that are incurred January 1, 2009, through December 31, 2011, the ESP period. The carrying costs on the environmental investments fall within the ESP period and, therefore, may be included in the ESP pursuant to the broad language of Section 4928.143(B)(2), Revised Code, permitting recovery for unenumerated expenses.

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5 See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company's Transmission Cost Recovery Rider*, Case No. 08-1202-EL-UNC, Finding and Order at 4 (December 17, 2008); *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedure for Certain Storm-Related Services Restoration Costs*, Case No. 08-1332-EL-AAM, Finding and Order at 1 (January 14, 2009).

6 *Indus. Energy Users-Ohio v. Public Util. Comm.* (2008), 117 Ohio St.3d 486, 493, quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312.

7 *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, 90.

As noted in the Order, approval of the continuing environmental carrying costs is consistent with the Commission's decisions in the 07-63 and the RSP 4 percent cases. Given our prior orders, we find that inclusion of these expenses is reasonable. IEU and OCC have not raised any new claims that the Commission have not previously considered regarding the carrying costs on AEP-Ohio's environmental investments. Accordingly, IEU's and OCC's requests for rehearing on this issue are denied.

C. Annual Non-FAC Increases

(39) AEP-Ohio asserts that the Commission's rejection of the proposed automatic annual increases to the non-FAC portion of the generation rates is unlawful and unreasonable (Cos. App. at 14-17). AEP-Ohio claims that the proposed annual increases of 3 percent for CSP and 7 percent for OP were intended to recover costs during the ESP period associated with environmental investments made during that period, as well as cost increases related to unanticipated, non-mandated, generation-related cost increases (Id. at 14). AEP-Ohio notes that, although the Order adopted Staff's proposal regarding recovery of carrying charges on new environmental investments, the Commission's failure to adopt any automatic, annual increases was unreasonable and unlawful pursuant to Section 4928.143(B)(2)(e), Revised Code (Id. at 15). The Companies specifically request that the Commission authorize the 3 and 7 percent automatic, annual increases, offset by whatever revenue increase is granted in relation to the recovery of carrying costs related to new environmental investment (Id. at 15-16). At one point, however, AEP-Ohio seems to be arguing that the Commission should adopt any automatic, annual increases, regardless as to whether it is the amount of increases proposed by AEP-Ohio or the amount recommended by Staff (Id. at 15).

(40) As noted by IEU and OCC, the Companies do not raise any new arguments with regard to allowing automatic, annual increases (IEU Memo Contra at 9-10; OCC Memo Contra at 10). Just as we concluded in the Order, the Companies have failed to sufficiently support the inclusion of such automatic increases, and the record is void of any justification for the increases.

AEP-Ohio has raised no new arguments, and thus, its request for rehearing on this ground is denied.

(41) With regard to the recovery of carrying charges on new environmental investments, AEP-Ohio questions the timing of when it may seek recovery of the carrying costs associated with the new investments made during the ESP (Cos. App. at 16).

(42) In our Order, we adopted Staff's approach regarding the recovery of the carrying costs for environmental investments made during the ESP period, and found that the Companies could request, through an annual filing, recovery of carrying costs after the investments have been made to reflect actual expenditures (Order at 29-30). The Commission cited Staff's example, which envisioned an application in 2010 for recovery of 2009 actual environmental investment costs and annually thereafter for each succeeding year to reflect the actual expenditures (Id., citing Tr. Vol. XII at 132; Staff Ex. 10 at 7). To clarify, we conclude that Staff's approach, requiring an application to request recovery of actual environmental investment expenditures after those expenditures have been incurred, is reasonable.

II. DISTRIBUTION

A. Annual Distribution Increases

(43) The Companies proposed two plans, an Enhanced Service Reliability Plan (ESRP) and gridSMART, to support initiatives to improve AEP-Ohio's distribution system and service to its customers. The Companies requested annual distribution rate increases of 7 percent for CSP and 6.5 percent for OP to implement the two plans. In the Order, the Commission considered the two plans separately and found that the annual distribution rate increases were unnecessary in light of the Commission's findings on the ESRP and gridSMART plans, and consequently eliminated the annual distribution rate increases from the ESP (Order at 30-38).

(44) Kroger maintains that the Commission properly rejected AEP-Ohio's annual distribution rate increases (Kroger Memo Contra at 7).

1. ESRP

(45) AEP-Ohio asserts that the Commission's deferment of certain aspects of its ESRP to a distribution rate case where all components of distribution rates would be subject to review is unreasonable and unlawful in violation of Section 4928.143(B)(2)(h), Revised Code (Cos. App. at 27). AEP-Ohio posits that the Commission's conclusion conflicts with the express provisions of SB 221, which permit single-issue ratemaking proposals for distribution infrastructure and modernization initiatives within ESP proposals (Id. at 27-28). AEP-Ohio further claims that it "merely sought incremental funding to support an incremental level of reliability activities designed to maintain and enhance service reliability levels" (Id. at 27).

(46) AEP-Ohio argues that the Commission erred by failing to find that three of the four ESRP initiatives met the statutory requirements of Section 4928.143(B)(2)(h), Revised Code (Id. at 28). While AEP-Ohio commends the Commission on its finding that the enhanced vegetation management program did meet the statutory requirements, it believes that the Commission should have reached similar conclusions on the other ESRP programs (Id.).

(47) Conversely, Kroger and OPAE contend that the Commission lawfully and reasonably deferred the decision to implement all but one of the ESRP initiatives to a distribution rate case (Kroger Memo Contra at 7-8; OPAE Memo Contra at 5). Kroger explains that, while Section 4928.143(B)(2)(h), Revised Code, allows an ESP to include provisions regarding single-issue ratemaking, it does not mandate that the Commission approve such provisions, and it especially does not require the Commission to authorize all distribution proposals included in an ESP (Id.).

(48) OCC opines that, although it agrees with the decision to defer ruling on the three ESRP initiatives, it believes that the Companies failed to meet their burden of proof in demonstrating that the vegetation management program complies with Ohio law and is in the public interest (OCC App. at 57-59). OCC also disputes the Commission's application of Section 4928.143(B)(2)(h), Revised Code, and states that the Commission erred in finding that the vegetation management

initiatives met the statutory requirements. OCC also submits that the Commission erred when it characterized the proposed vegetation initiative as "cycle-based" (OCC App. at 61).

(49) Moreover, OCC alleges that the Commission acted unlawfully when it approved an ESRP rider without specifying an identified amount and without receiving testimony on the need for the riders (Id. at 55).

(50) As stated in the Order, the Commission recognizes that Section 4928.143(B)(2)(h), Revised Code, authorizes the Companies to include in its proposed ESP provisions regarding single-issue ratemaking for distribution infrastructure and modernization incentives. However, the statute also dictates what the Commission must do as part of its determination as to whether to allow an ESP to include such provisions. Section 4928.143(B)(2)(h), Revised Code, states, in pertinent part:

> As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of *any provision* described in division (B)(2)(h) of this section, the commission *shall examine* the reliability of the electric distribution utility's distribution system *and ensure* that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

Section 4928.143(B)(2)(h), Revised Code (emphasis added).

The Commission examined the four initiatives included as part of the Companies' ESRP and determined that only one, the enhanced vegetation initiative, met these criteria. Contrary to AEP-Ohio's assertion,[8] the Commission did consider and evaluate each initiative and found that the enhanced vegetation initiative was the only initiative that was supported by the record in this proceeding (see Order at 30-32). The Commission concluded that, at the time of the Order, the record did not

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[8] Cos. App. at 30.

contain sufficient evidence to support the other three initiatives and, thus, the Commission declined to implement the programs within the context of the ESP; however, the Commission stated that it would consider the initiatives further in the context of a distribution rate case.

(51) The Commission continues to believe that the appropriate vehicle to review, consider, and make a determination on the remaining initiatives, as well as the recovery of any costs associated with those initiatives, is through a distribution base rate case. Accordingly, AEP-Ohio's request for rehearing on this issue is denied.

(52) The Commission agrees with OCC with regard to the three initiatives referenced above. The Commission did not believe that the record supported the need for those programs and, thus, the Commission declined to include those programs in the ESRP, and declined to include any recovery for such programs in the ESRP rider. The Commission disagrees, however, that the record was void of any evidence regarding the vegetation management program and costs associated therewith. Several individuals, including an OCC witness, testified on the proposed plan, as well as the Companies' current practices (Cos. Ex. 11; OCC Ex. 13; Staff Ex. 2; Tr. Vol. VII 64-65, 84, 87-88; Tr. Vol. VIII at 60-62). Testimony was also heard on the expenditures associated with the proposed vegetation initiative and the recovery of those costs (Staff Ex. 2 at 9-13). The Commission created the ESRP Rider as a mechanism to recover the actual costs incurred so that the expenditures could be tracked, reviewed to determine that they were prudent and incremental to costs included in base rates, and reconciled annually. As fully discussed in the Order at pages 30-34, the Commission finds that the Companies did meet their burden of proof to demonstrate that the vegetation management program, with Staff's additional recommendations, was reasonable, in the public interest, and in compliance with the statutory requirements. OCC raises no new arguments on rehearing and, therefore, rehearing on this ground is denied.

(53) AEP-Ohio seeks clarification on the additional Staff recommendations that the Commission approved as part of the enhanced vegetation initiative (Cos. App. at 34).

(54) The Commission found that the enhanced vegetation initiative, with Staff's additional recommendations, was a reasonable program that will advance the state policy. The Commission emphasized the importance of a balanced approach that not only reacts to problems that occur, but that also maintains the overall system. To achieve this goal, the Commission fully expects the Companies to work with Staff to strike the correct balance within the cost level established by our Order, which is based on the Companies' proposed ESRP program.

(55) AEP-Ohio also seeks clarification on the final paragraph in the Order that discusses cost recovery associated with the three remaining initiatives proposed through the ESRP (Cos. App. at 32).

(56) The Commission further clarifies that the language regarding cost recovery and the inclusion of costs associated with the remaining initiatives in the ESRP rider is permissive and conditioned on subsequent Commission approval for including such costs. Specifically, the Commission stated: "*If* the Commission, in a subsequent proceeding, determines that the programs regarding the remaining initiatives should be implemented, and thus, the associated costs should be recovered, those costs *may*, at that time, be included in the ESRP rider for future recovery, subject to reconciliation as discussed above" (Order at 34 (emphasis added)).

2. GridSMART

(57) The Order recognized that federal matching funds under the American Recovery and Reinvestment Act of 2009 (ARR Act) are available for the installation of gridSMART Phase I and directed AEP-Ohio to make the necessary filing to request the federal funds. Given the availability of federal funds, the Commission reduced the Companies' request for gridSMART Phase I from $109 million (over the term of the ESP) by half to $54.5 million for the term of the ESP. Further, the Order established the gridSMART rider for 2009 at $33.6 million based on projected expenses, subject to an annual true-up and reconciliation of CSP's prudently incurred costs.

(58) In its application for rehearing, AEP-Ohio notes that CSP developed an incremental revenue requirement for gridSMART Phase I of approximately $64 million during the ESP term (Cos. Ex. 1 DMR-4) and, therefore, CSP's compliance tariffs reflect, consistent with the intent of the Order, half of the incremental revenue requirement. According to AEP-Ohio, as reflected in the Companies' compliance tariff filing, the initial gridSMART rider rate is designed to recover approximately $32 million or half of the gridSMART Phase I incremental revenue requirement (Cos. App. at 35, n.13).

(59) However, AEP-Ohio argues that the Commission's discussion of the ARR Act and the likelihood of AEP-Ohio obtaining such funds are beyond the scope of the record. Further, AEP-Ohio asserts that the details for federal funding of smart grid projects have not been fully developed. The Companies argue that, to the extent that the Order conclusively presumes that AEP-Ohio will secure federal matching funds for each dollar invested by the Companies and their customers, the Order is unreasonable and unlawful. AEP-Ohio states that the Commission's decision as to gridSMART places CSP in an unfunded mandate situation to the extent that CSP receives less than 50 percent for its gridSMART project or the U.S. Department of Energy institutes a cap of $20 million on each gridSMART project. For this reason, AEP-Ohio requests that the Commission clarify that it intends to fully fund the gridSMART Phase I project through rates. Otherwise, AEP-Ohio reasons that the Commission lacks the authority to order enhancement programs without recovery for the utility as to improvements ordered. *Forest Hills Utility Co. v. Pub. Util. Comm.* (1972), 31 Ohio St.2d 46, 57 (Cos. App. at 35-37).

(60) OCC contends that AEP-Ohio's assertion that the directive to proceed with gridSMART Phase I without commensurate rate relief contradicts *Forest Hills* and will be subject to reversal by the Supreme Court of Ohio is inappropriate at this time and unfounded. OCC reminds the Companies that, pursuant to the Order, the initial rider is established to provide AEP-Ohio $33.6 million for its 2009 gridSMART expenditures. Accordingly, OCC states that AEP-Ohio has not been denied funding and there has been no determination that AEP-Ohio's prudently incurred gridSMART costs will not be fully covered in the

future. Thus, OCC reasons that the Companies' claim of an unfunded mandate situation is premature, and the request for rehearing should be denied (OCC Memo Contra at 23-25).

(61) First, the Commission acknowledges that the Order inadvertently based the gridSMART component of the Companies' ESP on $109 million, which is the total projected investment costs, including operations and maintenance expenses, for the Companies' proposed gridSMART Phase I project. As the Companies explain, CSP's ESP application included a request for the incremental revenue requirement for gridSMART during the ESP of approximately $64 million (Cos. Ex. 1 DMR-4). As recognized by AEP-Ohio and implemented in its tariff filing, it was our intent to approve recovery of half of the gridSMART Phase I incremental revuene requirement, $32 million. Accordingly, rehearing is granted to correct this error in our Order.

(62) Next, the situation before the Supreme Court in *Forest Hills*, is factually different from the situation for CSP as to gridSMART Phase I. In *Forest Hills*, the court held that the utility had not been awarded funding to adequately maintain utility service much less the iron removal equipment and water storage tanks ordered by the Commission. In this instance, the initial gridSMART rider is set at $32 million for 2009 projected expenses, subject to annual true-up and reconciliation based on CSP's prudently incurred costs and application for federal funding. Based on the information presented at Cos. Ex. 1 DMR-4, $32 million represents sufficient revenues for CSP to commence its gridSMART program. As noted in the Order, the Commission wishes to encourage the expedient implementation of gridSMART. However, the Commission will not let the desire for the expedient implementation of gridSMART cloud the financial soundness of the costs to ultimately be incurred by Ohio's ratepayers. Consistent with our decision to approve the gridSMART Phase I project, we clarify that, once CSP properly applies for and otherwise meets its obligations to receive federal funds to offset the total costs of gridSMART Phase I, the Commission will review its gridSMART Phase I expenditures and, once the Commission concludes that such expenditures were prudently incurred by CSP, the Commission intends to approve recovery of CSP's gridSMART Phase I costs.

(63) IEU, OCC, and OPAE argue that the Order approved, in part, the Companies' request for gridSMART without addressing the intervenors' arguments that the gridSMART proposal was not cost-effective as required by Sections 4928.02(D) and 4928.64(E), Revised Code (IEU App. at 22, 39-40; OPAE Memo Contra at 6; OCC App. at 49-51). According to OCC, because AEP-Ohio failed to present a detailed cost/benefit analysis of gridSMART Phase I, the full deployment of costs of gridSMART, a risk sharing plan between ratepayers and shareholders, or the expected operational savings associated with the implementation of gridSMART, AEP-Ohio failed to meet its burden of proof that gridSMART is cost-effective (OCC App. at 49-51). OCC also argues that AEP-Ohio failed to present any evidence that gridSMART will benefit AEP-Ohio customers or society (OCC App. at 51-52). IEU and OCC argue that the Order fails to set forth the Commission's reasoning for its approval of the Companies' gridSMART proposal (IEU App. at 22, 39-40; OCC App. at 48-49). Further, OCC argues that the Order does not include in the findings of fact or conclusions of law any support for the Commission's adoption of gridSMART Phase I, in violation of Section 4903.09, Revised Code (OCC App. at 48-49). IEU argues that the Commission's approval of these aspects of the ESP can not be reconciled with the goal of keeping rate increases "as close to zero as possible" (IEU App. at 22, 39-40). For these reasons, IEU and OCC argue that the Order is unreasonable and unlawful.

(64) Regarding IEU's and OCC's claims that the Order fails to comply with Section 4903.09, Revised Code, AEP-Ohio retorts that IEU's and OCC's disagreement with the Commission's decision is not equivalent to a violation of Section 4903.09, Revised Code. The Companies note that the Order specifically recognized the features and benefits of proposed gridSMART Phase I, based on the record. Accordingly, AEP-Ohio argues that the Order presents the Commission's basic rationale and record support for gridSMART Phase I and, therefore, the Order meets the requirements of Section 4903.09, Revised Code (Cos. Memo Contra at 25-27).

(65) As to OCC's and IEU's claims that gridSMART has not been shown to be cost-effective in accordance with Sections

4928.02(D) and 4928.64(E), Revised Code, AEP-Ohio answers that these code provisions are policy arguments that are not binding on the Commission and, therefore, the arguments of OCC and IEU on the basis of Sections 4928.04(E) and 4928.64(E), Revised Code, are misguided. The Companies note that several statutes of the Ohio Revised Code promote the deployment of advanced metering infrastructure (AMI). Notably, AEP-Ohio points out that Section 4928.02(D), Revised Code, encourages the deployment of AMI as an example of cost-effective, demand-side, retail electric service; that Section 4905.31(E), Revised Code, in the context of an ESP, creates a specific cost recovery mechanism opportunity for the deployment of advanced meters; and that the General Assembly included a long-term energy delivery infrastructure modernization plan as an item that can be included in an ESP under Section 4928.143(B)(2)(h), Revised Code. Based on the potential of gridSMART technologies to significantly enhance customers' energy management capabilities, AEP-Ohio reasons that the legislature mandated the requirements in Section 4928.66, Revised Code, for energy efficiency and peak demand reductions (Cos. Memo Contra at 27-29). The Companies argue that, while OCC and IEU focus exclusively on one aspect of the stated policy, cost-effectiveness, the Commission has a responsibility to consider all of the policies presented in Section 4928.02, Revised Code. Cost-effective, as defined by AEP-Ohio, does not mean that a network component (or group of components like gridSMART) pays for itself but, rather that it is a reasonable and prudent approach to deploying needed functionalities and features. (Cos. Memo Contra at 27).

(66) In the Order, the Commission summarized the key components of CSP's gridSMART proposal and emphasized its support of smart grid technologies. The Commission noted the potential for a well-designed smart grid system to provide customers and the electric utility long-term benefits, including decreasing the scope and duration of electric outages, improvements in electric service reliability, and the ability to provide customers the opportunity to better manage their energy consumption and reduce their energy costs (Order at 34-35, 37).

The Commission's endorsement of gridSmart Phase I is based on the projects' ability to drive a broad range of potential economic benefits both to consumers and the utilities. While consumers are given the capabilities to reduce their bills, utilities earn the capability to manage their systems.

For customers, the ability to have real-time price information and the ability to respond to such prices means that they may develop consumption patterns that both save them dollars while helping the utilities shave their peaks. This price-responsive demand not only reduces the need for high-cost generation capacity, but also reduces the need to continually expand the costly transmission and distribution components. The essence of this project is an infrastructure that embraces the following elements: advanced metering, dynamic pricing, information feedback to consumers, automation hardware, education, and energy efficiency programs. If executed appropriately, customers will receive the benefits of demand reduction across all seasons.

From the utility infrastructure side, gridSmart may lead to much-needed improvements in reliability. In the digital world that presently exists, and in the technology-driven world into which we are moving, the demand for precise and reliable power delivery systems is imperative. As we move forward, there will be new demands placed upon the grid to accommodate variable and intermittent inputs, such as the various forms of alternative energy generators. One can hardly imagine what the technologies of the future will bring us; we understand, however, that they must be adaptable to our needs. This is the essence of the smart grid.

(67) Further, the statutes referenced by AEP-Ohio in its memorandum contra indicate the legislature's endorsement of AMI. Furthermore, to the extent that SB 221 encourages the deployment of AMI and clarifies the legislature's policy directives at Section 4928.02, Revised Code, and in light of the Commission's desire to implement infrastructure and technological advancements to enhance service efficiencies and improve electric usage, the Commission modified and adopted the Companies' gridSMART proposal. The Commission specifically directed AEP-Ohio to pursue federal funds, in an effort to reduce the gridSMART Phase I cost that could be passed on to Ohio ratepayers. We also, as suggested by Staff,

implemented a rider as opposed to the automatic increase proposed by the Companies. In keeping with the enunciated state policies for reasonable electric rates and the requirements of SB 221 that encourage the implementation of AMI, the Commission approved the adoption of a gridSMART rider. Our Order requires separate accounting for gridSMART, an opportunity for the gridSMART plan to be reviewed and updated annually and an opportunity for the Commission to review the gridSMART expenditures to ensure that they were prudently made prior to the Companies' recovery of any gridSMART costs.

For these reasons, the Commission concludes that the adopted gridSMART component of AEP-Ohio's ESP best meets the requirements of SB 221, and meets the Commission's obligation to the citizens of Ohio to encourage the implementation of AMI and ensure the availability of adequate, reliable, safe, efficient and reasonably priced electric service. As noted in the Order, we believe it is important that electric utilities take the necessary steps "to explore and implement technologies such as AMI that will potentially provide long-term benefits to customers and the electric utility." Thus, the Commission denies IEU's, OCC's, and OPAE's applications for rehearing as to the gridSMART component of the Companies' ordered ESP.

Because of the compelling need to alter the paradigm that has traditionally governed the relationship between the customer and the utility, we are ordering AEP to implement no later than June 30, 2010 a transition to an integrated smart grid within its Phase I project area. The goal should be to maximize benefits to consumers consistent with the aforementioned objectives.

B. Riders

1. Provider of Last Resort (POLR) Rider

(68) OCC and Kroger allege that the Commission's approval of the POLR charge to allow AEP-Ohio to collect 90 percent of the revenues that AEP-Ohio proposed in its POLR rider was unreasonable and unlawful given that the charge was calculated incorrectly and was established unreasonably high (OCC App. at 29-34; Kroger App. at 3-6). Kroger submits that reducing the

requested POLR amount by 10 percent to account for the reduction in risk by requiring shopping customers to pay market rates if they return to the Companies is insufficient. Kroger agrees that the POLR risk is reduced if returning customers are required to pay market prices, but Kroger believes that the reduction in the POLR risk to the Companies is greater than 10 percent (Kroger App. at 4-5). Kroger also opposes the use of the Black-Scholes model to calculate the amount of the POLR risk, stating that the Black-Scholes model exaggerates the Companies' POLR risk (Id.).

(69) OHA and OMA raise similar arguments, adding that the limited shopping that has occurred and the unlikelihood that it will occur in the future further reduces AEP-Ohio's risk and the need to compensate for that risk (OHA App. at 6-8; OMA App. at 5-6).

(70) OEG states that the Commission properly found that the POLR rider should be avoidable for those customers who shop and agree to return at a market price; however, OEG believes that the Commission did not go far enough. OEG requests that the Commission grant rehearing to allow the POLR rider to be avoidable by those customers who agree not to shop during the ESP through a legally binding commitment (OEG App. at 6).

(71) OCC further contends that the Commission's actions authorizing the collection of POLR charge revenues for January through March 2009 at the higher rates authorized by the Order, even though the new SSO rates were not in effect at that time, and customers were already paying a POLR charge, violated Section 4905.22, Revised Code, and case precedent (OCC App. at 34-36).

(72) Additionally, OCC alleges that the Commission violated Section 4928.20(J), Revised Code, when it required residential customers of governmental aggregators to pay a stand-by charge. OCC explains that the statute permits governmental aggregators to elect not to receive standby service on behalf of their residential customers, in exchange for electing to pay the market price for power if the residential customers return to the electric utility (OCC App. at 36-37).

(73) AEP-Ohio disagrees with the intervenors and argues that the POLR rider approved by the Commission was lawful and reasonable (Cos. Memo Contra at 3-8). AEP-Ohio asserts that the parties are raising issues that were fully litigated in the proceeding and have not raised any new arguments and thus the grounds for rehearing on the POLR-related issues should be denied.

(74) AEP-Ohio also explains that OCC misperceives the risk associated with the POLR obligation and argues that, as with other rate components that are part of the ESP, there is no double-recovery (Cos. Memo Contra at 24). Rather, the Companies' increased all charges embedded in the ESP, including the POLR charge, to reflect the 2009 revenue levels authorized by the Commission, and then offset the revenues that had been collected already in the first quarter (Id.).

(75) First, as explained by AEP and recognized by others,[9] we explicitly stated in our Order that customers in governmental aggregation programs and those who switch to an individual CRES provider can avoid paying the POLR charge if the customers agree to pay the market price upon return to the electric utility after taking service from a CRES provider (see Order at 40). As such, OCC's request for rehearing on this matter is denied.

(76) With regard to the amount of the POLR charge, the Commission carefully considered all of the arguments, testimony, and evidence in the proceeding and determined that the Companies should be compensated for the cost of carrying the risk associated with being the POLR provider, including the migration risk. Based on the evidence presented, the Commission adopted the Companies' witness' testimony who quantified that risk at 90 percent of the estimated POLR costs, using the Black-Scholes model (see Tr. Vol. XIV at 204-205; Cos. Ex. 2-E at 15-16; Cos. Ex. 1, Exhibit DMR-5). The parties have not raised any new issues for the Commission's consideration. Therefore, we deny rehearing regarding the various POLR issues that have been raised.

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9 See Cos. Memo Contra at 2-3; OEG App. at 6.

(77) As for the argument of double-recovery of POLR charges or retroactive ratemaking, the Commission finds that this argument is comparable to OCC's arguments concerning all of the ESP charges and finds similarly. As discussed in subsequent section III.C (Effective Date of the ESP), our Order authorized the Companies' to increase all charges embedded in the ESP, including the POLR charge, to reflect the 2009 revenue levels approved by the Commission. However, our Order also directed the Companies to offset any revenues that had been collected from customers in the first quarter to specifically prevent any double recovery. As such, rehearing on this issue is also denied.

2. Energy Efficiency, Peak Demand Reduction, Demand Response, and Interruptible Capabilities

(a) Baselines and Benchmarks

(78) The Companies proposed that the load of the former Monongahela Power Company's (MonPower) customers be excluded from the calculation of CSP's EE baseline to be established pursuant to Sections 4928.64 and 4928.66, Revised Code.[10] In the Order, the Commission concluded that the MonPower customer load shall be included in the Companies' EE baseline because the MonPower load was not a load that CSP served and would have lost, but for some action by CSP (Order at 43).

(79) AEP-Ohio requests rehearing on this aspect of the Order. AEP-Ohio, in its sixth assignment of error, argues that the Order erroneously failed to address the Companies' demonstration that the record in the MonPower Transfer Case reflected the Commission's concerns for MonPower's customers if they were not served under a rate stabilization plan (RSP). CSP notes that Staff witness Scheck acknowledged that MonPower customers were facing electricity prices directly based on wholesale market prices that far exceeded the level of retail prices offered by MonPower (Tr. Vol. VII at 201-202). CSP reminds the Commission that, in this proceeding, Staff recognized that there

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[10] *In the Matter of the Transfer of Monongahela Power Company's Certified Territory in Ohio to the Columbus Southern Power Company,* Case No. 05-765-EL-UNC, Opinion and Order (November 9, 2005) (MonPower Transfer Case).

were important "economic development" issues in the MonPower Transfer Case (Cos. Ex. 2A at 48). Further, CSP notes that, in the MonPower Transfer Case, the Commission concluded that "economic benefits will inure to all citizens and businesses in both regions by helping to sustain economic development in southeastern Ohio."[11] The Companies argue that it is not fair or reasonable for the Commission to now take such a narrow and technical view of economic development and request that the Commission exclude the MonPower load from the EE baseline. In the alternative, CSP requests that, should the Commission affirm its decision that the MonPower load was not economic development, the EE and PDR baselines be adjusted to ensure that the compliance measurement is not unduly influenced by other factors beyond CSP's control as requested in the Companies' Brief (See Cos. Br. at 103; Cos. App. at 17-20).

(80) The Commission affirms its decision to include the former MonPower customer load in the calculation of CSP's EE baseline to be established pursuant to Sections 4928.64 and 4928.66, Revised Code. While the Commission appreciates that CSP entered into an agreement to serve the former service territory of MonPower, as discussed in the Order, the transfer of such customer load was not economic development given that it was not a load CSP served and would have otherwise lost but for some action by CSP. We acknowledge that pursuant to Section 4928.66(A)(2)(b), Revised Code, the Commission may amend an electric utility's EE and PDR benchmarks if the Commission determines that an amendment is necessary because the electric utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control. We also acknowledge that Section 4928.66(A)(2)(c), Revised Code, requires the baseline to be normalized for certain changes including appropriate factors to ensure that the compliance measurement is not unduly influenced by factors outside the control of the electric utility. The Commission will consider such request for adjustments to the baseline by AEP-Ohio and other electric utility companies when appropriate.

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11 MonPower Transfer Case, Opinion and Order at 11.

(b) Interruptible Capacity

(81) As a part of the ESP, the Companies' requested that their interruptible service load be counted towards their PDR requirements to comply with Section 4928.66(A)(2)(b), Revised Code. The Companies also proposed to increase the limit of OP's Interruptible Power-Discretionary Schedule (Schedule IRP-D) to 450 Megawatts (MW) from the current limit of 256 MW and to modify CSP's Emergency Curtailable Service (ECS) and Price Curtailable Service (PCS) to make the services more attractive to customers. The Companies request that the Commission recognize the Companies' ability to curtail customer usage as part of the PDR compliance (Cos. Ex. 1 at 5-6).

(82) In the Order, the Commission agreed with Staff and OCEA that interruptible load should not be counted in the Companies' determination of its EE/PDR compliance requirements unless and until the load is actually interrupted. IEU argues that the Commission failed to present sufficient reasoning to support this position. IEU states that the Commission's reliance on the testimony of Staff and OCEA's discussion of the issue is limited (IEU App. at 51).

(83) As noted in the Order, OCEA argued that counting interruptible load is contrary to the objectives of SB 221 and, because the customer controls part of the load when non-mandatory reductions are requested, interruptible load should not be counted (Order at 46). IEU proffers that OCEA's arguments are contrary to the record evidence and common sense (IEU App. at 51). The Companies and IEU reason that Section 4928.66(A)(1)(b), Revised Code, dictates that the peak demand reduction programs merely be "designed to achieve" a reduction in peak demand (Cos. App. at 21; IEU App. at 52). The applicants for rehearing note that Staff witness Scheck acknowledged that "designed to achieve" is fundamentally different from a requirement to "achieve" as is required in Section 4928.66(A)(1)(a), Revised Code, regarding EE programs (Cos. App. at 21; IEU App. at 52). IEU agrees with the Companies' arguments on brief that interruptible service arrangements provide an on-system capability to satisfy reliability and efficiency objectives as part of a larger planning process (Cos. Brief at 112-115), and cites the regional

transmission organizations (RTO) programs as an example (IEU App. at 52). The Companies contend that, unlike unused energy savings capabilities, PDR programs create a capability to reduce peak demand that can either be exercised or reserved for future use as needed and, if the PDR resource or capability is not needed for operational reasons or because weather is mild, PDR capability is fully reserved for future use without depletion or diminishing its value as a resource (Cos. App. at 22). IEU also contends that an interruptible customer's buy-through of a non-mandatory interruptible event is not a reason to reject it as a part of an electric utility PDR program under Section 4928.66(A)(2)(c), Revised Code, and the Commission should reverse its decision. IEU states that excluding interruptible capacity will require the Companies to offer a program inferior to the programs available from the RTO (IEU App. at 52-53). Finally, AEP-Ohio emphasizes, as noted in the Companies' brief, that the Commission's Integrated Resource Plan (IRP) rules, as proposed by Staff, define "native load" of a system to mean the internal load minus interruptible loads at Rule 4901:5-5-01(R), O.A.C.[12] (Cos. Br. at 115; Cos. App. at 22-23). Thus, the applicants for rehearing reason that including interruptible load as a part of the Companies' EE/PDR compliance program is consistent with the goals of SB 221.

(84) OCC states that the Commission previously considered and rejected certain of the Companies' arguments on this issue. In light of the fact that the Commission has previously given this issue due consideration and rejected the Companies' arguments, OCC argues that the Companies' application for rehearing of this issued should be denied (OCC Memo Contra at 22-23).

(85) Upon further consideration of the issues raised, the Commission has determined that it is more appropriate to address interruptible capacity issues in AEP-Ohio's PDR portfolio plan proceeding docketed at Case Nos. 09-578-EL-EEC and 09-579-EL-EEC.

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[12] See adopted Rule 4901:5-5-01(R), O.A.C., *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Section 4928.66, Revised Code, as Amended by Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD (Green Rules) (April 15, 2009).

(c) EE/PDR Rider

(86) In its fourth assignment of error, AEP-Ohio requests, among other things, that the Commission clarify that the phase-in of the approved rate increase and deferral of total bill increases over the established cap do not include revenue increases associated with a distribution base rate case or the revenue associated with the energy efficiency and peak demand reduction cost recovery (EE/PDR) rider (Cos. App. at 13-14).

(87) As discussed in findings (27) and (28) above in regard to the TCR, we clarify that the percentage cap increase on total customer bills does not include the EE/PDR rider or future distribution base rates established pursuant to a separate proceeding.

3. Economic Development Cost Recovery Rider

(a) Shared recovery of forgone economic development revenue

(88) In its application for rehearing, OCC argues that the Commission Order is unreasonable to the extent that the Order fails to require the Companies to share a portion of the revenues foregone due to economic development programs (OCC App. at 39-41). OCC recognizes that Section 4928.143(B)(2)(i), Revised Code, permits an electric utility to file an ESP with provisions to implement economic development programs and to request that program costs be recovered from, and allocated to, all customer classes. OCC repeats the statements made in its briefs and rejected by the Commission in the Order that it has been the Commission's long-standing policy to equally divide the cost of the foregone revenue subsidies between the utility's shareholders and customers. OCC claims the Commission's ruling on this issue constitutes an unreasonable shift in established regulatory policy to the prejudice of AEP-Ohio's residential customers and a rejection of OCC's request to annually review each approved economic development arrangement. OCC interprets the Order to foreclose any such annual review and, except for the Companies and the Commission, to bar any other parties an opportunity to review

economic development contracts initially and periodically thereafter (OCC App. at 39-41).

(89) AEP-Ohio opposes OCC's request for rehearing on this matter. AEP-Ohio argues that, although OCC acknowledges that it is within the Commission's discretion to determine "the amount and allocation of the costs to be recovered" for foregone economic development revenue, at the same time, OCC claims that revenue sharing is within the Commission's discretion. AEP-Ohio asserts that despite OCC's claim that revenue sharing is an established Commission policy, the practice is not reflected in any of its special arrangements prior to the implementation of SB 221. The Companies proffer that, to the extent the alleged change in policy requires a reason, in SB 221, the General Assembly explicitly included recovery of foregone revenue as a part of economic development contracts in the amendments to Section 4905.31(E), Revised Code (Cos. Memo Contra at 36-37).

(90) The Commission finds that OCC has failed to present any new arguments for the Commission's consideration on this issue. We do not find it necessary or appropriate to require all parties to initially review and/or to annually review the economic development arrangements. Consistent with the current practice, the Commission will review economic development arrangements on a case-by-case basis which will afford interested parties an opportunity to be heard in individual economic arrangement cases. Accordingly, we deny OCC's request for rehearing.

(b) <u>Economic development contract customer compliance review</u>

(91) OCC also argues that the Economic Development Rider (EDR) is unfair, lacks accountability and fails to evaluate the Companies' or the customer's compliance with their respective obligations. OCC states that the EDR approved in the Order does not require that recovery be limited to AEP-Ohio's costs net of benefits of the economic development program. Further, OCC claims that, without any review or accountability of the customers receiving the economic development benefits of such approved arrangements, costs cannot be determined. OCC argues that the Commission failed to make any provisions for

recipients of economic development contracts to be held accountable for their obligations under the economic development arrangements. Further, OCC asserts that this absence of accountability of the customer-recipient is unreasonable because it allows anyone to receive an economic development discount with nothing more than representations that it will make investments in the state of Ohio. OCC contends that the Commission should only approve discounted economic development rates, recovery by the electric utility and EDRs if investment in Ohio actually occurs (OCC App. at 65-66).

(92) OCC also argues that the non-bypassable EDR is also unreasonable and unlawful because it is abusive, anticompetitive, and not proper. OCC states that AEP-Ohio does not intend to offer economic development rates to shopping customers, but will impose the EDR charges on shopping customers. OCC asserts that the lack of symmetry between the availability of the benefit, and who pays for the benefit, renders the EDR unlawful and unreasonable, as approved by the Commission (OCC App. at 66).

(93) The Companies state that OCC's arguments are premature. In defense of the Commission's decision, the Companies remind OCC that the Commission will review and address the specific circumstances of each economic development arrangement as it is presented for approval and, that if there are any enforcement issues in the future, the Commission's continuing jurisdiction over economic development arrangements can be used to address any issues that arise. Regarding OCC's claims that the non-bypassable nature of the EDR is unlawful, abusive, and anticompetitive, the Companies reason that the fact that the EDR is non-bypassable ensures that it is competitively neutral. AEP-Ohio explains that a bypassable EDR would give CRES providers an undue advantage and emphasizes that CRES provider rates do not reflect recovery of "public interest" discounts in comparison to the electric utility's regulated SSO rates, which reflect forgone economic development discounts. Further, the Companies reason that all customers and the community benefit from economic development (Cos. Memo Contra at 37-38).

(94) The Commission finds that OCC has not presented any new arguments that the Commission has not previously considered regarding review of economic development arrangements or the sharing of foregone revenues for economic development. We agree with the Companies that all customers and the community benefit from economic development and, therefore, find it is reasonable for the EDR to be non-bypassable as permitted by law. The Commission finds that its current procedure to review and analyze each proposed economic development arrangement is sufficient to address OCC's concerns regarding accountability and the electric utility's and economic development customer's contract compliance obligations. For these reasons, we deny OCC's request for rehearing.

C. Line Extensions

(95) AEP-Ohio avers that the Commission's rejection of its proposed line extension provisions is unlawful and unreasonable, and states that the Commission should authorize AEP-Ohio to implement up-front payments contemplated in the Commission's November 5, 2008, Finding and Order issued in Case No. 06-653-EL-ORD (Cos. App. at 6-9).[13]

(96) Recognizing that the line extension policies were still being considered at the time of the rehearing applications, OCC argues that AEP-Ohio's rehearing request is without support and should be denied (OCC Memo Contra at 19-20).

(97) As stated in our Order, the Commission is required to adopt uniform, statewide line extension rules for nonresidential customers pursuant to SB 221, which it has done in Case No. 06-653-EL-ORD. Although the rules are not yet effective, the Commission adopted modified line extension rules in its Entry

[13] The Ohio Home Builder's Association (OHBA) requested leave to file a limited memorandum contra AEP-Ohio's application for rehearing on April 27, 2009. AEP-Ohio responded to the request on May 5, 2009, and moved to strike the pleading. We find OHBA's motion to be improper and will not be considered because OHBA is not a party to these cases and because OHBA has not shown that its failure to enter a prior appearance is due to just cause and that its interests were not already adequately considered by the Commission. However, even if we were to consider the request and permit OHBA's memorandum contra, OHBA's arguments would not modify our decision regarding the line extension issue.

on Rehearing issued on May 6, 2009. AEP-Ohio was an active participant in the administrative rulemaking and concerns that it has regarding the matters included in that rulemaking process are not appropriate for these proceedings. AEP-Ohio has failed to raise any new arguments regarding this issue. Accordingly, rehearing on this ground is denied.

III. OTHER ISSUES

A. Corporate Separation

1. Transfer of Generating Assets

(98) IEU alleges that the Commission erred by allowing AEP-Ohio to recover, through the non-FAC portion of the generation rate, the Ohio customers' jurisdictional share of any costs associated with maintaining and operating the Waterford Energy Center and the Darby Electric Generating Station (IEU App. at 19-21). IEU states that the Commission's determination was without record evidence and a demonstration of need (Id.).

(99) AEP-Ohio responds that the Commission's actions were reasonable in light of SB 221 and the requirement that the Commission placed on AEP-Ohio to retain the generating facilities. AEP-Ohio also submits that the Commission's decision was lawful pursuant to Section 4928.143, Revised Code, which allows such flexibility in approving an ESP (AEP Memo Contra at 11-12).

(100) After further consideration, the Commission finds IEU's arguments persuasive and grants rehearing on the issue of recovery of costs associated with maintaining and operating the Waterford Energy Center and the Darby Electric Generating Station facilities through the non-FAC portion of the generation rate. The Companies have not demonstrated that their current revenue is inadequate to cover the costs associated with the generating facilities, and that those costs should be recoverable through the non-FAC portion of the generation rate from Ohio customers. We, therefore, direct AEP-Ohio to modify its ESP and remove the annual recovery of $51 million of expenses

including associated carrying charges related to these generation facilities.

B. PJM Demand Response Programs

(101) As a part of the ESP, the Companies proposed to revise certain tariff provisions to prohibit SSO customers from participating in the demand response programs (DRP) offered by PJM, both directly and indirectly through a third-party. The Commission concluded that, despite Integrys' arguments to the contrary, the Commission was vested with the broad authority to address the rate, charges, and service issues of Ohio's public utilities as evidenced in Title 49 of the Revised Code and, therefore, reasoned that this Commission is the entity to which the Federal Energy Regulatory Commission (FERC) was referring in the Final Rule.[14] However, the Commission ultimately determined that the record lacked sufficient information for the Commission to consider both the potential benefits to program participants and the costs to Ohio ratepayers to determine whether this provision of the ESP will produce a significant net benefit to AEP-Ohio consumers. As a result, the Commission deferred the issue to be addressed in a separate proceeding and requested that AEP-Ohio modify its ESP to eliminate the provision that prohibits participation in PJM DRP.

(102) The Companies request rehearing of the Commission's decision, arguing that deferring this matter to a subsequent proceeding and allowing continued participation in DRP is unreasonable and against the manifest weight of the evidence in the record. AEP-Ohio points to what it calls "exhaustive treatment" of the issue by the parties in their briefs, motions, memoranda, written testimony and hearing transcripts. AEP-Ohio submits that the Order allows current DRP participants to continue participation in such programs through mid-2010, halfway through the term of the ESP, but also permits other customers to register to participate since FERC has re-opened registration until May 1, 2009.[15] The Companies view the re-opening of registration by FERC as an opportunity for the Commission to prohibit current

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[14] *Wholesale Competition in Regions with Organized Electric Markets* (Docket Nos. RM07-19-000 and AD07-7-000), 125 FERC ¶ 61,071 at 18 CFR Part 35 (October 17, 2008) (Final Rule).

[15] *PJM Interconnection*, 126 FERC ¶61,275, Order at ¶89 (March 26, 2009).

registrants' participation in DRP, without prejudice, by way of a timely decision to restrict retail participation.

(103) The Companies also argue that the Indiana Utility Regulatory Commission (URC) recently granted a request by an AEP-Ohio affiliate to continue the Commission's default prohibition against retail participation in the PJM DRP while that Commission continues to consider a more permanent resolution to this issue. However, the Indiana URC will consider individual customer requests to participate in DRP on a case-by-case basis.[16] AEP-Ohio advocates the Indiana URC's approach, which the Companies assert will facilitate the use of demand resources within Ohio and allow AEP-Ohio to refine its retail DRP to meet the mandates for PDR. AEP-Ohio contends that the Order creates uncertainty for the Companies and additional costs for ratepayers in two respects: (a) AEP-Ohio's PDR compliance costs increase with the exportation of Ohio's demand response resources through retail participation in the PJM programs; and (b) nonparticipating customers will incur additional long-term capacity costs due to AEP-Ohio's obligation to continue to provide firm service even though the participating customers are using their load in a manner that is akin to interruptible service. AEP-Ohio states that it is the Companies' goal to emulate the PJM DRP at the retail level to the extent possible. Further, AEP-Ohio proposes that, if the Commission restricts retail participation on rehearing and orders the Companies to modify their programs to the maximum extent possible, AEP-Ohio's customers would benefit from demand response in terms of a reduction in the capacity for which AEP-Ohio customers are responsible. According to AEP-Ohio, such a decision would also encourage AEP-Ohio to work with stakeholders to ensure that predictable consumer demand response is recognized as a reduction in capacity that CSP and OP carry under PJM market rules and support AEP-Ohio's PDR obligations (Cos. App. at 23-26).

(104) IEU, OCC, and Integrys each filed a memorandum contra this aspect of the Companies' request for rehearing. Like AEP-Ohio, IEU agrees that the Commission had sufficient information to

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16 *In the Matter of the Commission's Investigation Into Any and All Matters Related to Demand Response Programs Offered by the Midwest ISO and PJM Interconnection*, Cause No. 43566 (February 25, 2009 Order).

decide this issue, but supports the Commission's conclusion to allow retail participation in DRP until a decision is ultimately made. Further, IEU asserts that the bases AEP-Ohio cites for support of its request for rehearing are inaccurate and/or misleading (IEU Memo Contra at 10-11). IEU and OCC state that AEP-Ohio has mischaracterized the Indiana URC's ruling. IEU contends that the Indiana URC's position is irrelevant as Indiana operates under a cost-based ratemaking regime unlike Ohio (IEU Memo Contra at 11). Further, OCC cites and IEU quotes the Indiana URC's order to state, in part:

> The initiation of the Commission's investigation in this Cause did not alter the Commission's existing regulatory practice of requiring approval prior to direct participation by a retail customer in an [regional transmission organization demand response program]. *Nor did the Commission's investigation prohibit Indiana end-use customers desiring to participate in PJM's DRPs from filing a petition seeking approval from the Commission.* Instead, the Commission commenced this investigation to determine whether, and in what manner, the Commission's regulatory procedure should be modified or *streamlined to address requests by end-use customers based on the importance of demand response and the increased interest in participation in RTO DRPs.* [*Emphasis added.*][17]

IEU and OCC note that of the five Indiana customers that requested approval to participate in the RTO DRP, as of the filing of the memoranda, three requests had been approved and two were pending (IEU Memo Contra at 12, n.5; OCC Memo Contra at 13). In other words, IEU concludes that there is in fact no prohibition on customer participation in RTO DRP in Indiana (IEU Memo Contra at 11-12).

(105) Integrys and OCC state that there is no evidence in the record to support AEP-Ohio's claims that continued participation in RTO DRP will increase the Companies' compliance cost to meet its PDR requirements under Section 4928.66, Revised Code (Integrys Memo Contra at 8; OCC Memo Contra at 12). Integrys

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[17] *Id.* at 5.

explains that the statute does not require the use of in-state demand response resources, prohibit participation in RTO DRP or require the mercantile customer to integrate or commit their DRPs to AEP-Ohio. Commitment is at the mercantile customer's option. Further, Integrys interprets the Commission's decision in the Duke Energy of Ohio ESP case to affirm its interpretation[18] (Integrys Memo Contra at 5-6, 8; OCC Memo Contra at 12). OCC also argues that there is no evidence in the record to support the representation that customer participation in DRP will not benefit AEP-Ohio's customers by decreasing AEP-Ohio's load. OCC reasons, and Integrys agrees, that DRP improve grid reliability and make markets more efficient by avoiding the cost associated with new generation to service load and, as such, the intervenors reason that DRP are a benefit to all customers participating in the RTO's market (OCC Memo Contra at 12; Integrys Memo Contra at 9). Integrys rationalizes that customers participating in the PJM DRP under AEP-Ohio Schedules GS-2, GS-3 and GS-4 pay demand charges for firm capacity irrespective of whether the customer takes service or service is curtailed (Integrys Memo Contra at 9). IEU claims that AEP-Ohio's arguments implicitly concede that PJM's DRP are more valuable to customers than the interruptible service offered by CSP and OP, and IEU emphasizes that it is the mercantile customer's choice to dedicate customer-sited capabilities under SB 221. Also, IEU asserts that the Companies' assertion that the Order will cause additional long-term capacity costs for nonparticipating customers is misleading at best. IEU explains that, should any additional long-term capacity costs be incurred, it would not be the result of customers participating in RTO DRP, but AEP-Ohio's commitment to meet the generation resource adequacy requirement of all retail suppliers within its PJM zone for a period of five years through PJM's fixed resource requirement program (IEU Memo Contra at 12-13). Finally, OCC asks that the Commission retain an SSO customer's option to participate in a variety of competitive DRP as such is supported by the goals of SB 221 (OCC Memo Contra at 11).

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[18] *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan,* Case No. 08-920-EL-SSO, et al., Opinion and Order at 35 (December 17, 2008).

(106) Integrys and IEU assert that any failure of AEP-Ohio to comply with the PDR requirements of Section 4928.66, Revised Code, are not because of customer participation in PJM's DRP but the lack of attractive programs offered by AEP-Ohio (IEU Memo Contra at 13; Integrys Memo Contra at 7). Further, Integrys notes that the Companies' three interruptible service offerings (Schedule IRP-D, ECS Rider and PCS Rider) have only 8 AEP-Ohio customers (Integrys Memo Contra at 7). Further, Integrys suggests that, if the Companies believe that the DRP are affecting the Companies' PDR compliance plans, Section 4928.66(A)(2)(b), Revised Code, permits AEP-Ohio to request that its PDR goals be revised (Integrys Memo Contra at 7-8).

(107) As to the Companies' alleged desire to emulate RTO DRP, OCC argues that the Companies could have developed and filed DRP that mirrored PJM's programs as a part of their ESP application (OCC Memo Contra at 12). For these reasons, IEU, Integrys, and OCC request that the Commission deny AEP-Ohio's application for rehearing as to the PJM DRPs.

(108) The Commission rejects AEP-Ohio's proposal to direct DRP participants to withdraw from PJM programs at this time. The registration deadline of May 1, 2009, has passed and we consider this request to be moot. Furthermore, the Commission is not convinced by AEP-Ohio's claims that an abrupt change in the Commission's decision would not harm customers already registered to participate in PJM's DRP, given that customers may have entered into contractual arrangements, invested in new equipment, and agreed to operational commitments in reliance on the Commission's Order. Thus, we affirm our decision not to prohibit AEP-Ohio's SSO customers' from participating in PJM's DRP at this time and will reconsider our decision in a subsequent proceeding. Finally, the Commission notes that AEP-Ohio, IEU, Integrys nor OCC presented, in their respective briefs or memoranda, quantification of record evidence to address the Commission's primary concern with this provision of the ESP. The Commission requires additional information to consider the costs incurred by various customers to balance the interest of AEP-Ohio customers participating in PJM's DRP and the cost AEP-Ohio's other customers incur via the Companies' retail rates. Moreover, none of the arguments presented in the applications for rehearing or the memoranda

contra sufficiently address this aspect of the PJM DRP and, therefore, fail to persuade the Commission to reconsider its decision regarding PJM DRP participation. In further consideration of the need to balance the potential benefits to PJM DRP participants and the costs to AEP-Ohio ratepayers, the Commission clarifies that AEP-Ohio customers under reasonable arrangements with AEP-Ohio, including, but not limited to, EE/EDR, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates, are prohibited from also participating in PJM DRP, unless and until the Commission decides otherwise in a subsequent proceeding. The remaining issues in the applications for rehearing on PJM DRP participation are denied.

C. Effective Date of the ESP

(109) OCC claims that the Commission erred by permitting AEP-Ohio to apply their amended tariff schedules to services rendered prior to the entry of the Commission approving such schedules, in violation of Sections 4905.22, 4905.32, and 4905.30, Revised Code, and the Ohio and United States Constitutions (OCC App. at 18-19, 24-25). OCC recognizes that the effective date of the tariffs, as corrected by the Entry Nunc Pro Tunc issued on March 30, 2009, was "not earlier than both the commencement of the Companies' April 2009 billing cycle and the date upon which the final tariffs are filed with the Commission" (Id.). However, OCC asserts that permitting the increased rates to be effective on a "bills-rendered" basis, instead of a "services-rendered" basis, authorizes increased rates prior to the approval of the new rates, which includes charges for electric energy already consumed. OCC opines that applying amended tariff schedules to services rendered prior to the Commission's entry that approves such schedules violates Sections 4905.22 and 4905.32, Revised Code (Id.).

(110) OCC also asserts that the Commission erred by establishing the term of the ESP beginning January 1, 2009, which equates to the Companies collecting retroactive rates for the period January 2009 through March 2009, in violation of Ohio law and case precedent (Id. at 20-24).

(111) OCC further alleges that the Order violates Section 4928.141(A), Revised Code, which OCC interprets to require an electric utility's rates in effect January 1, 2009, to continue if an SSO has not been approved by the Commission. OCC argues that, to the extent that, the Order replaced the rates in effect at January 1, 2009 without an approved SSO, it violates Section 4928.141(A), Revised Code (Id. at 25-26).

(112) Similar arguments were raised by several other intervenors (OMA App. at 3-4; OHA App. at 2-6; Kroger App. at 8-9).

(113) AEP-Ohio opposes the intervenors' claims regarding retroactive ratemaking, stating that the various claims are without merit and should be rejected (Cos. Memo Contra at 14-25). AEP-Ohio explains that the Commission's Order, as clarified by the Entry Nunc Pro Tunc, approved a modified ESP with a term commencing January 1, 2009, and ending December 31, 2011 (Id. at 14). AEP-Ohio filed compliance tariffs implementing the new rates adopted in the ESP, commencing with the first billing cycle of April 2009, which included an offset of the revenues collected from customers during the interim period (Id.). The Companies argue that Sections 4905.22 and 4905.32, Revised Code, require public utilities to charge rates that are authorized by the Commission, as reflected in approved tariffs at the time of the billing, which AEP-Ohio properly did, and OCC's general disagreement with adopting rate increases on a bills-rendered basis is not an issue unique to this proceeding (Id. at 16).

(114) AEP-Ohio further responds that the Commission authorized a three-year ESP with a term of January 1, 2009, through December 31, 2011, and required that the revenues that were collected during the interim period, pursuant to Case No. 08-1302-EL-ATA, be offset by the new rates (Id. at 17). AEP-Ohio states that the Commission did not establish retroactive rates but, instead, used a prospective rate mechanism to implement the full term of the ESP. The Companies also note that the Commission's decision did not provide for new rates during the first quarter of 2009 and did not require the Companies to backbill individual customers for service already provided and paid for.

(115) It has been a long standing Commission policy to approve the effective date of tariffs on either a bills-rendered or services-rendered basis depending on the specific facts of each case. As noted by the Companies, "[o]rdering rate increases effective on a bills-rendered basis is a widely used and established practice in various types of rate cases" (Cos. Memo Contra at 16).

(116) We also agree with AEP-Ohio that our decision does not constitute retroactive ratemaking in violation of *Keco Industries , Inc. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 254 (Cos. Memo Contra at 18). During the interim period (first quarter of 2009), the Commission approved rates pursuant to Section 4928.141(A), Revised Code,[19] and, subsequently, through our Order in this proceeding, we authorized the revenues collected during the interim period to be offset against the total allowable revenues that the Companies are authorized to receive pursuant to their ESP, as modified by the Commission (Order at 64, corrected by Entry Nunc Pro Tunc at 2). The Commission did not permit the Companies to go back to January 1, 2009, and re-bill customers for the consumption that they used during the first quarter of 2009 at the higher rate established by our Order. Had our Order allowed the Companies to re-bill customers at the higher rate based on actual consumption from January 1, 2009, through March 31, 2009, which it did not, we would agree that an order authorizing such rebilling would constitute retroactive ratemaking.

(117) As explained previously, our Order remains consistent with Section 4928.141, Revised Code, which requires an electric utility to provide consumers, beginning on January 1, 2009, a SSO established in accordance with Section 4928.142 or 4928.143, Revised Code (Order at 64, corrected by Entry Nunc Pro Tunc at 2). The Commission approved AEP-Ohio's three-year ESP, with modifications, but did not allow AEP to collect higher rates associated with that approved ESP until the first billing cycle of April 2009. We clarified our intent to this effect in our Entry Nunc Pro Tunc, pages 1- 2:

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[19] *In re Columbus Sothern Power Co. and Ohio Power Co.*, Case No. 08-1302-EL-ATA, Finding and Order at 2-3 (December 19, 2008) and Finding and Order at 2 (February 25, 2009).

> It was not the Commission's intent to allow the Companies to re-bill customers at a higher rate for their first quarter usage. The new rates established pursuant to the ESP were not to go into effect until final review and approval by the Commission of the Companies' compliance tariffs. Given that our order was issued on March 18, 2009, and that the Companies' existing tariffs approved by the Commission were scheduled to expire no later than the last billing cycle of March 2009, it was anticipated that the new rates would not become effective until the first billing cycle of April.

(118) We further addressed these issues in our entry issued on March 30, 2009, when we denied the request for a stay (March 30 Entry). In that March 30 Entry, we specifically stated that we disagree with the characterization that our action allowed AEP-Ohio to retroactively collect rates (March 30 Entry at 3). In that same March 30 Entry, we also addressed the claim that the Order violated Section 4928.141(A), Revised Code. We explained that in our finding and order issued on December 19, 2008, in Case No. 08-1302-EL-ATA, the Commission established rates for the interim period, stating that "the rates in effect on July 31, 2008, would continue until an SSO is approved in accordance with Section 4928.142 or 4928.143, Revised Code" (March 30 Entry at 3). Moreover, we agree with AEP-Ohio's understanding of the offset required by our Order (Cos. Memo Contra at 22). The offset was an adjustment that the Commission believed to be fair in calculating the incrementally higher revenue authorized for 2009, in light of the timing of the Commission's decision on the ESP and the need for an interim plan. The Commission has considered all of the arguments raised surrounding these issues several times in multiple proceedings and has specifically addressed the arguments in its previous decisions. The parties have raised nothing new for the Commission's consideration. Accordingly, the Commission finds that its Order does not constitute retroactive ratemaking, and does not violate any statute or constitutional provision. Therefore, we deny rehearing on all grounds associated with the effective date of the new ESP rates.

(119) Furthermore, the Commission finds that the Companies' should file revised tariffs consistent with this entry, to be effective on a date not earlier than both the commencement of the Companies' August 2009 billing cycle, and the date upon which final tariffs are filed with the Commission. In light of the timing of the effective date of the new tariffs, the Commission finds that the tariffs shall be effective for bills rendered on or after the effective date, and contingent upon final review by the Commission.

IV. SIGNIFICANTLY EXCESSIVE EARNINGS TEST (SEET)

(120) In the Order, the Commission concluded that the SEET would be established within the framework of a workshop to develop a common methodology for all Ohio electric utilities. The Commission reasoned that, pursuant to Section 4928.143(F), Revised Code, there is time to develop a common methodology for all Ohio electric utilities because the SEET will not actually be applied until 2010 for the year 2009, consistent with the Commission's decision in the FirstEnergy ESP Case.[20] However, the Commission recognized that AEP-Ohio required certain information to evaluate the modified ESP. The Commission noted that the Companies' earnings from off-system sales would be excluded from fuel costs and, consistent with that decision, also excluded off-system sales margins from any SEET.

A. AEP-Ohio as a single-entity for SEET

(121) AEP-Ohio, in its thirteenth assignment of error, requests that the Commission provide further clarification of the SEET and the scope of the issues to be addressed at the SEET workshop. AEP-Ohio requests that the SEET apply to CSP and OP as a single entity because investments in the electric utilities are made and their operations are conducted on a combined basis. The Companies argue that the "single entity" approach was supported by Staff (Staff Ex. 10 at 25). The Companies also argue that a common SEET methodology does not require an

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[20] *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 08-935-EL-SSO, Opinion and Order (December 19, 2008).

identical SEET methodology for each Ohio electric utility (Cos. App. at 40-41).

(122) While IEU does not take a position, at this time, on the merits of AEP-Ohio's request, IEU argues that the clarification need not be addressed as a part of the entry on rehearing and the issue is more appropriately deferred to the workshop (IEU Memo at 15). On the other hand, OCC opposes AEP-Ohio's request. OCC proffers that despite Staff's belief that the consolidated evaluation of the Companies' earnings for purposes of the SEET would help mitigate "asymmetrical" risk, Staff was reluctant to address the issue of whether such practice was permitted pursuant to SB 221. OCC argues that combining CSP and OP for SEET purposes is prohibited by the statute. OCC notes that paragraphs (C) and (E) of Section 4928.143, Revised Code, each refer to "the electric distribution utility" and that Section 4828.01(A)(6), Revised Code, defines electric distribution utility as "an electric utility that supplies at least retail electric distribution service." As such, OCC contends that the statute clearly expresses the legislative intent and the statute must be applied accordingly.[21] Thus, OCC reasons that the earnings of CSP and OP cannot be combined for calculation of the SEET pursuant to the statute (OCC Memo at 14-15).

(123) The Commission concludes that consideration of whether CSP and OP should be considered a single-entity, AEP-Ohio, for purposes of the SEET is an issue more appropriately addressed as a part of the SETT workshop.

B. <u>OSS</u>

(124) Kroger reasons that the Order is unreasonable and unlawful to the extent that the Order excluded OSS margins from the SEET and did not share OSS margins with customers as an offset to FAC. Kroger claims that the Order does not explain why OSS margins are excluded from the SEET (Kroger App. at 8). Further, Kroger clarifies that its request as to OSS was in the alternative. More precisely, Kroger requested that should the

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[21] *Time Warner v. Pub. Util. Comm.* (1996), 75 Ohio St.3d 229, 237, citing *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101.

Commission exclude OSS margins as an offset to the FAC, then the Commission should then include OSS margins in the SEET. Kroger argues that the Order inappropriately allows AEP-Ohio to retain all of the benefits of OSS margins and AEP-Ohio's distinction between SB 221's focus on retail sales as opposed to wholesale transactions is unsupported by legal authority and contrary to Ohio law. Kroger reasons that AEP-Ohio's generating assets, which produce electricity for OSS, are included in the calculation of the Companies' common equity and, therefore, OSS should be included in the SEET. Further, according to Kroger, neither Section 4928.143(F), Revised Code, nor any other provision of the Revised Code excludes OSS from the calculation of the return on common equity. Thus, Kroger requests that the Commission reconsider the Order to at least share OSS margins with AEP-Ohio's customers (Kroger App. at 6-8).

(125) OCC argues that recognizing OSS profits and sharing the profits between customers and the electric utility is consistent with the Commission's decision in a prior CEI Rate Case.[22] Further, OCC asserts that the Commission has previously determined that providing OSS revenue to jurisdictional customers can assist in achieving the goal of providing reliable and safe service and is consistent with the state policy set forth in Section 4928.02(A), Revised Code.[23] OCC argues that, although the law does not explicitly require an allocation of OSS to customers, the law also does not explicitly prohibit it. Thus, OCC reasons that the Commission has failed to follow it own precedent[24] (OCC App. at 16-17). Further, OCC reasons that the order fails to offer any justification for changing its position on this issue or to demonstrate why its prior decisions were in error. For this reason, OCC alleges that the Commission's Order yields an unreasonable and unlawful result as to the SEET (OCC App. at 18).

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22 *In the Matter of the Application of the Cleveland Electric Illuminating Company for Authority to Amend and to Increase Certain of it Filed Schedules Fixing Rates and Charges for Electric Service,* Case No. 84-188-EL-AIR, Opinion and Order at 21 (March 7, 1985).

23 *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in its Rates for Gas Service to All Jurisdictional Customers,* Case No. 95-656-GA-AIR, Entry on Rehearing at 6-7 (February 12, 1997).

24 *Cleveland Elec. Illuminating* (1975), 42 Ohio St.2d 403 at 431.

(126) OEG and OMA argue that the exclusion of OSS creates a fundamental asymmetry by comparing only part of the earnings of AEP-Ohio with the full earnings of the comparable companies (OEG App. at 2-4; OMA App. at 4-5). OEG argues that the "return on common equity that was earned" by the Companies includes profits from OSS. OEG contends there is no statutory basis for comparing only part of the earnings of AEP-Ohio with basis full earnings of the comparable companies and such a comparison distorts the analysis. As a key consumer protection provision of SB 221, OEG asserts that failing to include all of the Companies' earnings undermines the intentions of and the plain meaning of the statue. OEG notes that the record reveals that, during the term of the ESP, projected OSS profits are $431 million for OP and $360 million for CSP and ignoring such earnings misconstrues the statue and fails to provide meaningful consumer protection as intended by SB 221. On such basis, OEG and OMA argue that the SEET set forth in the Order is unlawful (OEG App. at 2-4; OMA App. at 4-5).

(127) As interpreted by OCC, Section 4928.143(F), Revised Code, requires the Commission to determine whether AEP-Ohio's ESP results in excessive earnings and includes all provisions of the ESP, including deferrals. OCC believes that eliminating deferrals from the SEET is an unauthorized adjustment and opines that the elimination of the deferrals is unlawful as it is not authorized by the statue. OCC argues that eliminating deferrals from the SEET will misstate the Companies' earnings, distorting the match between expenses and revenues and distorting the SEET. OCC asserts that the exclusion of the deferrals unlawfully gives AEP-Ohio a margin and virtually ensures that the Companies will not violate the SEET (OCC App. at 67-68).

(128) OEG agrees with the Commission's decision to exclude deferrals and the related expenses from the SEET so that deferrals are matched with revenues when revenues are received by the Companies. However, OEG seeks clarification of the Order to the extent that the Companies' annual earnings for purposes of the SEET will exclude all deferral of expenses and, once recovery of the deferral actually begins, all amortization expenses associated with amounts previously deferred (OEG App. at 4-6).

(129) We grant the intervenors' requests to reconsider the exclusion of OSS margins from the SEET calculation. We have decided that like our consideration of whether to treat AEP-Ohio as a single-entity for purposes of the SEET, OSS is an issue more appropriately addressed in the SEET workshop. Similarly, the Commission concludes that to further explore the issues of deferrals and related expenses, in regards to the SEET, we will also address these components of the SEET as part of the workshop.

V. MARKET-RATE OFFER (MRO) v. ESP

(130) AEP-Ohio argues that the Order is unlawful and unreasonable because Section 4928.143(C)(1), Revised Code, does not permit the Commission to modify the ESP if the proposed ESP is more favorable than the MRO (Cos. App. at. 4-5). OCC disagrees and states that the Commission properly applied the statutory test when it compared the modified ESP to the results that would otherwise apply under a MRO (OCC Memo Contra at 9). Similarly, Kroger, OPAE, IEU, and OEG assert that the Commission properly exercised its statutory authority to modify the proposed ESP to make it more favorable than the expected results of a MRO (Kroger Memo Contra at 4; OPAE Memo Contra at 4-5; IEU Memo Contra at 7; OEG Memo Contra at 3).

(131) We agree with the intervenors. The statute contemplates modification of a proposed ESP by the Commission, and then a comparison of the modified ESP, as approved, to the results that would otherwise apply under a MRO. As explained in our Order, our statutory authority is not limited to an after-the-fact determination, but rather, includes the authority to make modifications to a proposed ESP that are supported by the record. Therefore, AEP-Ohio's rehearing request is denied on this ground.

(132) IEU argues that the costs associated with the POLR obligation should not be included in the MRO portion of the ESP versus MRO comparison (IEU App. at 43-44). IEU contends that the Commission lacks the authority to approve a POLR charge in a Section 4928.142, Revised Code, proceeding (Id. at 44).

(133) The Companies interpret IEU's argument as an erroneous belief that the Companies' POLR obligation terminates in the MRO context (Cos. Memo Contra at 13). AEP-Ohio contends that its risk associated with the POLR obligation under SB 221 continues regarding the non-market portion of the MRO, and that it is unrealistic to evaluate the cost of an MRO without including the POLR obligation (Id.).

(134) IEU also appears to be requesting rehearing claiming that the Order does not provide adequate justification or offer even the "slightest clue" for its decision as required by Section 4903.09, Revised Code (IEU App. at 22-26). However, IEU then argues that the market price that the Commission used in its comparison is too high and that, since testimony was filed in the proceeding, market prices have declined. IEU is suggesting that the Commission do on rehearing exactly what it criticizes the Commission's Order for doing, which is base its opinion on information and data that is not in the record of the proceeding. AEP-Ohio objects to IEU's approach of using extra-record information to state that the Commission's analysis was flawed (Cos. Memo Contra at 12).

(135) There was no need for IEU to search for clues in the workpapers. The Commission weighed the evidence in the record and adopted Staff's estimated market prices, as well as Staff's methodology, in the Order. At page 72, the Commission stated its basis: "Based upon our opinion and order *and using Staff witness Hess' methodology* of the quantification of the ESP v. MRO comparison . . ." (emphasis added). Prior to explicitly stating which quantification analysis that it used, the Commission explained that Staff witness Hess' methodology included the utilization of Staff witness Johnson's estimated market rates to demonstrate that the ESP is more favorable in the aggregate as compared to the expected results of an MRO (Order at 70). The Order also explained that the Companies calculated the estimated market prices to be $88.15 per MWH for CSP and $85.32 per MWH for OP. OCC provided testimony of estimated market prices of $73.94 per MWH and $71.07 per MWH for CSP and OP, respectively (OCC Ex. 10 at 15-24), while Staff offered testimony of estimated market prices of $74.71 per MWH and $73.59 per MWH for CSP and OP, respectively,

which were then utilized by Staff in an MRO v. ESP comparison (Staff Ex. 1-A, Revised Exhibit JEH-1). Utilizing their respective estimated market prices, both OCEA (which includes OCC) and Staff concluded that the ESP, if modified, was more favorable in the aggregate than an MRO (see Order at 70-71). Based on the record before it, it was reasonable for the Commission to adopt Staff's estimated market rates and Staff's methodology to quantify the ESP v. MRO comparison. IEU's argument to the contrary lacks merit and, thus, is rejected.

(136) With regard to the MRO versus ESP comparison, our analysis did not end with the rehearing requests. Upon review of the record in this case and all arguments raised on rehearing, the Commission does in fact find that the ESP, including deferrals and future recovery of deferrals, as modified by the Order and as further modified by this entry, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

(137) The Commission notes that, with this entry, it is further modifying AEP-Ohio's ESP to reduce the rate impacts on customers. The Commission believes that the modifications made in this entry increase the value of the Companies' ESP. Nonetheless, even if we do not include the POLR obligation in the calculation of the MRO versus ESP comparison, the Commission finds that the ESP is still more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VI. SECTION 4903.09, REVISED CODE

(138) IEU generally argues that the Commission's decision fails to comply with the requirements of Section 4903.09, Revised Code, to sufficiently set forth the reasons prompting the Commission's decision based upon the findings of fact in regards to carrying costs, FAC, the rate increase limitation, POLR, the transfer of generation assets, gridSMART and other distribution rate increases, and the comparison of the ESP to the MRO (IEU App. at 4-26).

(139) Similarly, OCC argued that the Commission failed to meet the sufficiency requirements of Section 4903.09, Revised Code, when it denied OCC's motion for stay in its March 30, 2009, Entry Nunc Pro Tunc, and failed to make the Companies' collection of rates subject to refund, and when it approved the ESRP rider (OCC App. at 27-29, 55-57).

(140) AEP disagrees, stating that the Commission explained the bases for its determination of the issues raised in this proceeding in a manner that satisfies Section 4903.09, Revised Code, as well as Supreme Court precedent (AEP Memo Contra at 8-10).

(141) As discussed more fully in the individual sections dealing with each subject matter, the Commission finds that it fully and adequately set forth its decisions in its Order, consistent with Section 4903.09, Revised Code, and long standing precedent. See *Industrial Energy Users-Ohio v. Pub. Util. Comm.* (2008), 117 Ohio St.3d 486, 493, 2008 Ohio 990; *MCI Telecom. Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 513 N.E.2d 337; *Tongren v. Pub. Util. Com.* (1999), 85 Ohio St.3d 87, 1999 Ohio 206.

It is, therefore,

ORDERED, That the applications for rehearing be granted, in part, and denied, in part, as set forth herein. It is, further,

ORDERED, That the Companies file, for Commission review and approval, their revised tariffs consistent with this entry. It is, further, ORDERED, That a copy of this entry on rehearing be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto See concurrence

KWB/GNS:ct

Entered in the Journal
JUL 23 2009

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.	)))))	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.	))))	Case No. 08-918-EL-SSO

CONCURRING OPINION OF COMMISSIONER CHERYL L. ROBERTO

It is the Commission's responsibility to promote the policy of this state to "ensure the availability to consumers of ... reasonably priced retail electric service." R.C. 4928.02(A). We are mandated to approve or modify and approve an electric security plan (ESP) when we find that the plan or modified plan, including its pricing and all other terms and conditions, including any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142. R.C. 4928.143(C)(1).

While an ESP may include components described in R.C. 4928.143(B)(2), nothing in S.B. 221 requires that it be built on a component by component basis. In fact, given that the ESP is not cost based, focusing on any component in which a cost increase is expected or demonstrated obscures the failure to conduct the corollary examination of components of the base rate in which savings have occurred or in which revenue has increased. Thus, we are practically limited in our examination of an ESP or modified ESP to the aggregate impact.

While I concur that the modified ESP is more favorable in the aggregate than what would be expected under an MRO, I do not agree with the underlying policy decisions expressed in paragraphs 18, 38, and 76 of the order and write separately to highlight that, while I do not agree as to these policy decisions. I do concur in the result. As to the FAC baseline, in a cost-based matter it would be unacceptable to sacrifice accuracy when, alternatively, the Commission could order the record to be reopened for the sole purpose of receiving updated testimony as is appropriate for information that could not have been known at the time of the hearing pursuant to Rule 4901-1-34 of the Ohio Administrative Code, or order that the baseline be trued-up to account for actual 2008 fuel costs during annual reconciliation. Further, I specifically do not agree that R.C.

4928.143(B)(2) contemplates recovery for pre-January 1, 2009 environmental expenditures or that carrying costs for environmental expenditures should be accrued at the weighted average cost of capital when there has been no finding that the debt has been prudently incurred taking into account the availability of pollution control funds. Nor can I find, as to the incremental increase in the provider of last resort cost, that the Black Scholes model is an appropriate tool to determine an appropriate POLR charge, or that an increased risk of migration exists which requires an incremental increase in POLR, as a POLR component was already included within the Companies' existing base rates.

The ultimate result of these policy decisions, however, is to increase the Companies' authorized revenue which, when combined with revenue realized from other components of the ESP, results in a particular price for retail electric service. It is this price, together with all the terms and conditions of the modified ESP, that must be more favorable in the aggregate than the results otherwise to be expected pursuant to R.C. 4928.142 in order for the modified ESP to be approved.

Evaluating the "expected" results that would otherwise apply under R.C. 4928.142 when compared to this price is of necessity speculative. The calculation must include a projected market cost. Within the existing record, I concur that the projected market cost has been appropriately defined.[1] I do, however, find that, as argued by IEU and as summarized in paragraph 132, such a calculation may not properly include an incremental POLR increase. However, as stated in paragraph 137, even when correcting for this error by eliminating the incremental POLR increase from the MRO cost, I specifically concur that the modified ESP is still more favorable in the aggregate as compared to the expected results of an MRO.

Cheryl L Roberto

Cheryl ~~X~~ Roberto, Commissioner

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1 Given the significantly different economic conditions which existed between the time of the record testimony and the time at which the Commission considered this matter (both as to the original entry and upon rehearing), I would, however, have supported reopening the record for the limited purpose of refreshing the market price projections as this information was not available at the time of the hearing.