

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

PUCO

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

In the Matter of the Application of)
Ohio Power Company for Approval of its) Case No. 08-918-EL-SSO
Electric Security Plan; and an Amendment)
to its Corporate Separation Plan.)

In the Matter of the Fuel Adjustment Clauses) Case No. 09-872-EL-FAC
for Columbus Southern Power Company and) Case No. 09-873-EL-FAC
Ohio Power Company.)

In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power)
Company to Recover Commission-Authorized) Case No. 09-1094-EL-FAC
Deferrals Through Each Company's Fuel)
Adjustment Clause.)

In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power) Case No. 09-1095-EL-UNC
Company to Adjust Their Economic)
Development Cost Recovery Rider Rates.)

In the Matter of the Application of Columbus)
Southern Power Company and Ohio Power) Case No. 09-1906-EL-ATA
Company to Modify Their Standard Service)
Offer Rates.)

**APPLICATION FOR REHEARING AND
MEMORANDUM IN SUPPORT
OF INDUSTRIAL ENERGY USERS-OHIO**

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February 05, 2009

Attorneys for Industrial Energy Users-Ohio

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.))))))	Case 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
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In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates.)))))	Case No. 09-1095-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Standard Service Offer Rates.)))))	Case No. 09-1906-EL-ATA

APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

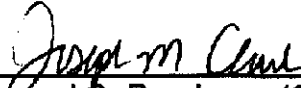
Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing from the January 7, 2010 Finding and Order in Case Nos. 09-872-EL-FAC, 09-873-EL-FAC, and 09-1906-EL-ATA (collectively "2010

Initial Rate Increase Cases”) as well as the January 7, 2010 Finding and Order in Case No. 09-1095-EL-UNC (“Rider EDR Proceeding”) of the Public Utilities Commission of Ohio (“Commission”). As explained in more detail in the attached Memorandum in Support, the Findings and Orders in the 2010 Initial Rate Increase Cases and Rider EDR Proceeding for Columbus Southern Power Company (“CSP”) and Ohio Power Company (“OP”) (collectively, “AEP-Ohio” or “Companies”) are unlawful and unreasonable for the following reasons:

- A. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over the 2010 Initial Rate Increase Cases or the Rider EDR Proceeding. The Commission lost jurisdiction over AEP-Ohio’s ESP and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio’s ESP Application.
- B. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.
- C. The Rider EDR Proceeding Finding and Order is unlawful and unreasonable inasmuch as the brand new exception for Rider EDR from the maximum percentage increases permitted in the ESP violates the Commission’s precedent and unreasonably increases customers’ rates.
- D. The Finding and Order in the Rider EDR Proceeding is unreasonable inasmuch it permits AEP-Ohio to calculate the carrying costs on deferred Rider EDR delta revenues as the weighted average cost of long-term debt without any evaluation of possible lesser cost alternatives.
- E. Approval of the recovery of delta revenues associated with the interim Ormet reasonable arrangement through the FAC as part of the 2010 Initial Rate Increase Proceedings was unreasonably premature inasmuch as the Commission has not yet issued an Order in the Ormet Interim Reasonable Arrangement Case.

IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and grant the relief requested herein.

Respectfully submitted,



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In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Standard Service Offer Rates.))))	Case No. 09-1906-EL-ATA

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 18, 2009, the Commission modified and approved AEP-Ohio's proposed electric security plan ("ESP"). In its Opinion and Order the Commission imposed maximum rate increase limitations for each of the Companies for each year of

the ESP.¹ The maximum rate increases for 2010 are 7% for OP customers and 6% for CSP customers. However, the Commission also exempted certain rate components from the increase limitations.² Additionally, the Commission approved the creation of a fuel adjustment clause ("FAC") for the duration of the ESP for each of the Companies and granted the Companies accounting authority to defer for possible future collection through an unavoidable surcharge any FAC costs beyond those recoverable under the Commission's increase limitations.³ The Commission also denied the Companies' request for automatic increases associated with generation expenses that are not recovered through the FAC. Further, the Commission granted the Companies authority to create an economic development cost recovery rider (Rider EDR) to recover delta revenue related to reasonable arrangements.⁴

On November 13, 2009 the Companies filed an Application in Case No. 09-1094-EL-FAC for permission to recover delta revenue related to a Commission-approved interim reasonable arrangement with Ormet Primary Aluminum Corporation ("Ormet") ("Ormet Interim Reasonable Arrangement Case"). The delta revenue in the Ormet Interim Reasonable Arrangement Case are associated with service to Ormet for the period of January 1, 2009 through September 17, 2009 and

¹ *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*, PUCO Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 22 (March 18, 2009) (hereinafter cited as "*AEP ESP Proceeding*").

² Exempted from the rate increase limitations are the Companies' transmission cost recovery riders ("TCRR"), any future adjustments to the Companies' energy efficiency/peak demand reduction ("EE/PDR") benchmark cost recovery riders, and any revenue increases associated with any distribution base rate case that may occur during the term of AEP-Ohio's ESP. *AEP ESP Proceeding*, Entry on Rehearing at 9, 31 (July 23, 2009).

³ *AEP ESP Proceeding*, Opinion and Order at 22-23.

⁴ *AEP ESP Proceeding*, Opinion and Order at 47-48.

include carrying costs proposed by AEP-Ohio.⁵ On November 13, 2009 the Companies also filed an Application in Case No. 09-1095-EL-UNC to recover through Rider EDR its actual and predicted 2009 delta revenue associated with the long-term unique arrangement approved for Ormet in Case No. 09-119-EL-AEC and with the unique arrangement approved for Eramet Marietta, Inc. ("Eramet") in Case No. 09-516-EL-AEC.⁶ The Companies also proposed to recover their 2010 estimated delta revenue associated with the Ormet and Eramet unique arrangements. On November 25, 2009, IEU-Ohio filed Motions to Intervene and Set Matters for Hearing in the Ormet Interim Reasonable Arrangement Case and the Rider EDR Proceeding, respectively, and raised several issues related to AEP-Ohio's Applications.

On December 1, 2009, the Companies filed a request in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC to increase their FAC rates to "reflect the percent increases permitted by the Commission in the ESP cases."⁷ The Companies also specifically noted that their FAC increase filing included the FAC-related deferrals associated with the Ormet interim reasonable arrangement (as set out in Case No. 09-1094-EL-FAC). Additionally, on December 3, 2009, the Companies filed an Application in Case No. 09-1906-EL-ATA to decrease their non-FAC rates, although the decrease was really just a shift from recovering 12 months of non-FAC revenue over a nine-month period to recovering 12 months of non-FAC

⁵ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Recover Commission-Authorized Deferrals Through Each Company's Fuel Adjustment Clause*, Case No. 09-1094-EL-FAC, Application at 3-5 (November 13, 2009).

⁶ *Rider EDR Proceeding*, Application (November 13, 2009).

⁷ *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC, *et al.*, Cover Letter with Tariff Filing (December 1, 2009).

revenue over a 12-month period.⁸ On December 10, 2009, Commission Staff issued a review and recommendation in the 2010 Initial Rate Increase Cases, finding that the rates proposed in the Applications provide for increases no greater than those authorized by the Commission and recommending that the Applications be approved. And, on December 11, 2009, IEU-Ohio filed a Motion to Consolidate the 2010 Initial Rate Increase Cases, the Rider EDR Proceeding, and the Ormet Interim Reasonable Arrangement Case.

The Commission issued its Findings and Orders in the 2010 Initial Rate Increase Cases and Rider EDR Proceeding on January 7, 2010. The Commission has not yet issued an order in the Ormet Interim Reasonable Arrangement Case. The Commission denied IEU-Ohio's requests to set the matters for hearing and to consolidate the cases. Additionally, the Commission rebuffed each of IEU-Ohio's substantive objections raised in the Rider EDR Proceeding. IEU-Ohio hereby respectfully files its Application for Rehearing for the Commission's consideration.

II. ARGUMENTS IN SUPPORT OF REHEARING

- A. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over the 2010 Initial Rate Increase Cases or the Rider EDR Proceeding. The Commission lost jurisdiction over AEP-Ohio's ESP and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP Application.**

AEP-Ohio filed its initial ESP Application with the Commission on July 31, 2008. Under Section 4928.143, Revised Code, the Commission was required to issue an order on AEP-Ohio's proposed ESP within 150 days, or December 28, 2008. The

⁸ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Standard Service Offer Rates*, Case No. 09-1906-EL-ATA, Application (December 3, 2009).

Commission eventually issued its Opinion and Order 80 days late on March 18, 2009. AEP-Ohio relies upon its approved ESP as the basis and the enabling vehicle for its Applications in the 2010 Initial Rate Increase Cases⁹ and the Rider EDR Proceeding.¹⁰

Section 4928.143(C)(1) states, "The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date." Under Section 4928.141(A), Revised Code, until the Commission issues an order approving, modifying and approving, or denying an ESP application, and upon expiration of the jurisdictional deadline, the then-current rate plan of an EDU must continue for the purpose of the utility's compliance with Section 4928.141(A), Revised Code. Thus, the Commission lost subject matter jurisdiction over AEP-Ohio's ESP Application when it failed to issue an order within the 150-day timeframe mandated by Section 4928.143(C)(1), Revised Code.

As a creature of statute, the Commission may only exercise that jurisdiction conferred upon it by the Ohio Revised Code.¹¹ The Commission patently lacked jurisdiction to proceed with the ESP case. Because the underlying ESP Orders are unlawful and the authority for the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding are grounded in the ESP, the Commission's Findings and Orders are unlawful and beyond the Commission's statutory authority. All Commission Orders in

⁹ *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, PUCO Case Nos. 09-872-EL-FAC, *et al.*, Cover Letter with Tariff Filing (December 1, 2009).

¹⁰ *Rider EDR Proceeding*, Application at 1 (November 13, 2009).

¹¹ *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 234 (1999).

the ESP proceeding itself, or any other subsequent proceedings stemming from the ESP proceeding, are illegal.

The Commission should find that its Orders in the 2010 Initial Rate Increase Cases, the Rider EDR Proceeding, and the ESP case were beyond its statutory authority inasmuch as the Commission lost subject matter jurisdiction over AEP-Ohio's ESP when it failed to issue an order within the 150-day deadline imposed by SB 221. As a remedy, the Commission should require AEP-Ohio to replace its current tariffs with the tariffs that were in effect on July 31, 2008 in accordance with Sections 4928.141 and 4928.143, Revised Code.

- B. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.**

Section 4928.143(C)(1), Revised Code only permits the Commission to approve an ESP if it finds that the approved ESP, which the Commission may modify before approving, is "more favorable in the aggregate" as compared to the expected results of a market rate option ("MRO") plan. Additionally, Section 4928.143(C)(2)(a), Revised Code, permits an EDU such as AEP-Ohio to withdraw, and thereby terminate, an ESP application when modifications made by the Commission are not acceptable to the EDU. Upon such withdrawal and termination, the electric distribution utility ("EDU") may file a new ESP application or an MRO under Section 4928.142, Revised Code. Further, Section 4928.141, Revised Code, states plainly that:

Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard

service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code.

Thus, under Section 4928.141, Revised Code, an EDU cannot accept the benefits of the rates approved in an ESP while simultaneously preserving the right to withdraw and terminate the ESP.

As IEU-Ohio has documented previously, AEP-Ohio has taken the benefits of its approved ESP at every turn while continuing to dispute the lawfulness and reasonableness of the very Orders that permit AEP-Ohio to enjoy those benefits.¹² Indeed, AEP-Ohio has never formally accepted its approved ESP, is still taking the benefits of the ESP, and has filed an appeal of its ESP at the Ohio Supreme Court.¹³ The Commission has never addressed this point of law despite IEU-Ohio raising it multiple times during the ESP proceeding.¹⁴ Thus, IEU-Ohio raises it again in these proceedings.

Ohio law does not allow AEP-Ohio to take the benefits of the Commission's Orders while reserving judgment to withdraw and terminate its ESP proposal. So long as AEP-Ohio reserves judgment to withdraw and terminate the approved ESP as a result of modifications made by the Commission, Section 4928.141, Revised Code,

¹² See *AEP ESP Proceeding*, IEU-Ohio Application for Rehearing at 9-12 (August 17, 2009).

¹³ *Columbus Southern Power Co. v. Pub. Util. Comm.*, Ohio Supreme Court Case No. 2009-2298.

¹⁴ See *AEP ESP Proceeding*, Entry on Rehearing at 2 (July 23, 2009). IEU-Ohio filed a Motion for Immediate Relief from Electric Rate Increases on April 20, 2009, raising this legal issue for the Commission's consideration. Despite the Commission indicating it would address IEU-Ohio's Motion (and all other pending motions) in its Entry on Rehearing, the Commission never mentioned or ruled on IEU-Ohio's Motion (or any of the other pending motions) in the remainder of its Entry on Rehearing. See also *AEP ESP Proceeding*, Second Entry on Rehearing at 7 (November 4, 2009) (finding that it was unnecessary to address this issue on rehearing because AEP-Ohio has not filed notice with the Commission indicating it would withdraw and terminate its approved ESP).

requires the prior "rate plan" to continue. The Findings and Orders in the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding contain the same fatal legal flaw as the Commission's Orders in the AEP-Ohio ESP Proceeding. The Commission illegally and unreasonably failed to require AEP-Ohio to accept the approved ESP and relinquish its statutory right to withdraw and terminate the ESP as a condition of taking the benefits of even higher rates approved in the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding.

Further, the Commission's failure to prohibit AEP-Ohio from accepting the benefits of the ESP, while simultaneously reserving judgment on whether to withdraw and terminate the ESP, undermines the very threshold ESP versus MRO comparison that Section 4928.143, Revised Code, requires be met for the Commission to approve an ESP and, by extension, to entertain the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding authorized by the approved ESP. The ESP versus MRO comparison conducted in the ESP proceeding by the Commission necessarily assumes that each of the components of the ESP will go unchallenged and not be disturbed. *Modifying any portion of the approved ESP would necessarily affect the "more favorable in the aggregate" test.* The Commission's failure to prohibit AEP-Ohio from taking the benefits of the ESP while reserving judgment on whether to accept the ESP leaves open the question of the ultimate costs to customers from the ESP, thereby calling into question the necessary assumption that the ESP construct in which the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding is proposed is in fact more favorable in the aggregate than the expected results of an MRO.

The Commission must reverse its approval of the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding inasmuch as the Findings and Orders are illegal under Sections 4928.141 and 4928.143, Revised Code, until AEP-Ohio formally accepts its approved ESP. The Commission should grant rehearing and condition AEP-Ohio's ability to continue charging the rates approved in the Findings and Orders on AEP-Ohio affirmatively accepting its ESP and withdrawing its appeal of its approved ESP.

- C. The Rider EDR Proceeding Finding and Order is unlawful and unreasonable inasmuch as the brand new exception for Rider EDR from the maximum percentage increases permitted in the ESP violates the Commission's precedent and unreasonably increases customers' rates.¹⁵**

The Commission's Entry on Rehearing in the AEP-Ohio ESP Proceeding explains that certain riders are exempt from the annual maximum rate increases set by the Commission in its Opinion and Order. Specifically, the Entry on Rehearing enumerated the exempted charges, saying "Additionally, the Commission clarifies that the Transmission Cost Recovery (TCR) rider should not impact the allowable total percentage increase. ... Similarly, any future adjustments to the EE/PDR Rider are excluded from the allowable total percentage increases. ... 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."¹⁶ Even more succinctly, the Commission again listed the riders that would be exempt from the maximum rate

¹⁵ IEU-Ohio's Assignment of Error only takes issue with the Commission's new exception for Rider EDR from the maximum revenue increases permitted by the Commission. IEU-Ohio has consistently supported the use of reasonable arrangements by Ohio as a tool to complement its economic development and retention efforts and has conveyed this long-standing perspective during legislative and regulatory proceedings. See, for example, *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 09-119-EL-AEC, Post Hearing Brief of Industrial Energy Users-Ohio at 4, FN 2 (July 1, 2009).

¹⁶ *AEP ESP Proceeding*, Entry on Rehearing at 9.

increase limitations, stating "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."¹⁷

IEU-Ohio observed in its Motion to Consolidate that it appeared that AEP-Ohio believed that Rider EDR was excluded from the maximum rate increase percentages included in its approved ESP.¹⁸ In its Finding and Order, the Commission (for the first time) found that Rider EDR is not subject to the maximum rate increase limitations. The Commission explained that its list of riders and other mechanisms exempt from the rate increase limitations was not "exhaustive" and that the recovery of delta revenues is permitted by statutory law and the Commission's rules.¹⁹ The Commission also noted that to find otherwise would result in considerable deferrals being created, including carrying costs, which would be passed on to customers.²⁰

¹⁷ *AEP ESP Proceeding*, Entry on Rehearing at 31.

¹⁸ See *2010 Initial Rate Increase Cases and Rider EDR Proceeding*, Motion to Consolidate at 6, FN 9 (December 11, 2009).

¹⁹ *Rider EDR Proceeding*, Finding and Order at 10.

²⁰ *Id.* This is a problem the Commission itself created. It was the Commission that permitted AEP-Ohio to collect ESP rates over what the Commission judged to be "just and reasonable" and worsen the consequences by deferring the obvious effects of the Commission's action until 2012 and making the consequences non-bypassable. If the Commission is interested in addressing the potential growth in deferrals, IEU-Ohio suggests that the Commission should direct its attention to things like eliminating the provider of last resort ("POLR") charges, which the Commission approved without any legitimate justification, or directing that the POLR revenue be applied to offset the potential for deferrals. At a minimum, the Commission's interest in deferrals ought to result in the Commission taking another look at the level of the POLR charge, particularly since its hypothetical justification rested on an assumed market price of electricity of approximately \$74.00 per megawatt hour ("MWh") which the Commission rejected as being too high in the FirstEnergy ESP proceeding. See *AEP ESP Proceeding*, Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 23-24 (April 16, 2009). In any event, it is unreasonable for the Commission to claim that it has some concern about the potential impact of deferrals when the Commission is permitting AEP-Ohio to raise rates at levels that create the very problem which the Commission says it is trying to avoid.

The Commission's Finding and Order is unlawful inasmuch as the Commission's decision is contrary to its own precedent. Nowhere does the Commission mention in its Entry on Rehearing or any other Order in AEP-Ohio's ESP proceeding that any other rider or other charge will be excluded from the maximum revenue increase limitations other than those enumerated by the Commission. Nor does the Commission indicate or give any hint that the list of exemptions (which it recited twice in the Entry on Rehearing) was not exhaustive. The Commission's Entry on Rehearing made it clear that only the EE/PDR Rider and the TCRR as well as any increase from a distribution rate case are exempt from the maximum rate increase limitations.

Additionally, the Commission's decision is unreasonable inasmuch as it piles on additional increases for customers at a most precarious time for Ohio's economy. In the ESP Opinion and Order, the PUCO determined that customers could not absorb the annual 15% increases proposed by AEP-Ohio.²¹ However, the Commission's decision essentially places some larger customers on the same path the Commission found unacceptable only 11 months ago. The increases permitted in the 2010 Initial Rate Increase Cases, combined with the rate increases approved in the Rider EDR Proceeding as well as AEP-Ohio's proposed increase to its EE/PDR Rider, would raise some larger customers' bills by over 10% for 2010.²² Further, this percentage increase does not include any increase that may be approved this year in the annual update of

²¹ *AEP ESP Proceeding*, Opinion and Order at 22. "Nonetheless, given the current economic climate, we believe that the 15 percent cap proposed by the Companies is too high." The Commission noted in a footnote that its belief was confirmed by various letters filed in the AEP ESP docket.

²² The Stipulation and Recommendation in AEP-Ohio's EE/PDR portfolio plan proceeding shows some larger customers would experience up to 4% total bill increases solely attributable to the proposed EE/PDR Rider. See *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, PUCO Case Nos. 09-1089-EL-POR, et al., Stipulation and Recommendation at Attachment A (November 12, 2009).

AEP-Ohio's TCRR or in a distribution rate case for AEP-Ohio.²³ Thus, the Commission's decision to now, for the first time, exempt Rider EDR from the revenue increase limitations unreasonably places customers in the very same position that the Commission found untenable when it approved AEP-Ohio's ESP in March 2009.

The Commission's Finding and Order in the Rider EDR Proceeding is unlawful inasmuch as it violates the Commission's own recent precedent and is unreasonable inasmuch as it unfairly piles on rate increases at a time when customers can least afford the rate increases proposed for Rider EDR. The Commission should grant rehearing and place Rider EDR under the maximum rate increase limitations approved in AEP-Ohio's ESP proceeding.

D. The Finding and Order in the Rider EDR Proceeding is unreasonable inasmuch it permits AEP-Ohio to calculate the carrying costs on deferred Rider EDR delta revenues as the weighted average cost of long-term debt without any evaluation of possible lesser cost alternatives.

In calculating the carrying costs associated with the Rider EDR delta revenues, AEP-Ohio proposed to use the weighted average costs of each company's respective long-term debt. The Commission adopted AEP-Ohio's proposal to use the average cost of each operating company's long-term debt, reasoning that it is a more appropriate mechanism under the semiannual reconciliation process prescribed for EDR rates under Rule 4901:1-38-08, O.A.C.²⁴ The Commission also directed AEP-Ohio to use, on a going-forward basis, the interest rates from its latest-approved filing for the calculation

²³ AEP-Ohio is required to file its TCRR update Application by April 16, 2010 for rates effective on July 1, 2010. See *In the Matter for the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as Amended by Amended Substitute Senate Bill 221*, PUCO Case No. 08-777-EL-ORD, Entry at 1 (April 15, 2009).

²⁴ *Rider EDR Proceeding*, Finding and Order at 9.

of carrying costs. Without any rationale or explanation, the Commission also rejected IEU-Ohio's proposal to recover carrying charges equal to AEP-Ohio's short term debt rate since the recovery period for Rider EDR is not more than 12 months.

The Commission should reverse its Finding and Order inasmuch as it is unreasonable. The Commission simply accepted AEP-Ohio's request with no examination of any lower cost alternatives. The Commission made no inquiry as to whether a short-term debt rate, which may be more appropriate in this instance since the recovery period is twelve months or less (Rider EDR will be updated and reconciled semi-annually)²⁵, would provide a lower interest rate that customers will pay for AEP-Ohio to carry this debt on its books. The "current economic climate" previously acknowledged by the Commission during the AEP-Ohio ESP proceeding has not improved.²⁶ Customers of all shapes and sizes need every break they can get on their bills and the Commission's failure to exert any effort to at least explore whether it could save customers money in this regard is unreasonable.

²⁵ *Id.* at 11-12.

²⁶ *AEP ESP Proceeding*, Opinion and Order at 22. Ohio's unemployment rate jumped to 10.9% in December 2009. Ohio's unemployment rate in March 2009, the month that the Commission issued the Opinion and Order in the ESP case, was 9.7%.

- E. Approval of the recovery of delta revenues associated with the interim Ormet reasonable arrangement through the FAC as part of the 2010 Initial Rate Increase Proceedings was unreasonably premature inasmuch as the Commission has not yet issued an Order in the Ormet Interim Reasonable Arrangement Case.**

As noted above, AEP-Ohio included in its proposed FAC charge in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC a request to collect through the FAC delta revenue amounts AEP-Ohio associates with the Ormet interim reasonable arrangement. AEP-Ohio also filed an Application for Commission review and approval of the interim reasonable arrangement delta revenue amounts in the Ormet Interim Reasonable Arrangements Case. The Commission approved the up-front recovery through the FAC of the delta revenue amounts proposed by AEP-Ohio despite not issuing a companion order approving AEP-Ohio's Application in the Ormet Interim Reasonable Arrangement case.

Several Parties raised significant concerns about the proposed Ormet interim reasonable arrangement delta revenue collections that, if accepted by the Commission, would drastically impact the amounts of delta revenues collected from customers through the FAC.²⁷ For example, the Ohio Consumers' Counsel ("OCC") and the Ohio Energy Group ("OEG") recommend only permitting AEP-Ohio to collect a maximum of \$2.7 million in delta revenues associated with the Ormet interim reasonable arrangement rather than the \$66 million that AEP-Ohio requests. It is unreasonable to collect delta revenues from customers through the FAC that have not yet been found to be just and reasonable, especially when multiple parties have raised significant and

²⁷ See *Ormet Interim Reasonable Arrangement Case*, Reply to AEP Memorandum Contra IEU Motion to Set Matter for Hearing and Objections to AEP's Application by The Office of the Ohio Consumers' Counsel and The Ohio Energy Group (December 16, 2009).

warranted concerns about the proper calculation of Ormet interim reasonable arrangement delta revenues.

The Commission's decision is even more unreasonable because the Commission previously found that additional proceedings were needed to determine the appropriate level of Ormet-related delta revenues that would be recovered from customers, including those delta revenues associated with the Ormet interim reasonable arrangement.²⁸ The Commission's approval of the up-front delta revenue recovery associated with the Ormet interim reasonable arrangement before issuing an order in the Ormet Interim Reasonable Arrangement Case essentially negates the Commission's previous Orders and runs contrary to its express intent to thoroughly explore the delta revenue amounts associated with the Ormet interim reasonable arrangement. An after the fact adjustment of the FAC dependent on the outcome of the Ormet Interim Reasonable Arrangement Case is clearly not what the Commission envisioned in its previous Orders.

Finally, it is unreasonable to approve recovery of the interim reasonable arrangement delta revenues when the proceeding in which the Commission approved the delta revenue deferral accounting authority has not completed. The Commission issued its Finding and Order approving AEP-Ohio's Application for accounting authority to defer delta revenues associated with the interim reasonable arrangement on January 7, 2009. OCC filed an Application for Rehearing of the Commission's Finding and Order and, on March 4, 2009, the Commission granted OCC's Application for

²⁸ *Ormet Interim Reasonable Arrangement Case*, Industrial Energy Users-Ohio's Reply to AEP-Ohio's Memorandum Contra Industrial Energy Users-Ohio's Motion to Set Matter for Hearing at 1-2 (December 15, 2009). See also *Ormet Interim Reasonable Arrangement Case*, Motion to Intervene, Motion to Set Matter for Hearing, and Memorandum in Support of Industrial Energy Users-Ohio (November 25, 2009).

Rehearing for purposes of further considering OCC's Application for Rehearing. The Commission has not yet issued a substantive Entry on Rehearing addressing the issues timely raised by OCC.

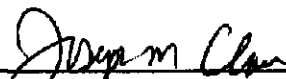
The Commission's Finding and Order in the 2010 Initial Rate Increase Cases is unreasonable inasmuch as the Commission should not have approved recovery of the Ormet interim reasonable arrangement delta revenues when the Commission has not yet determined what the just and reasonable delta revenue amounts should be, the Commission did not hold a hearing on the amounts of recoverable delta revenues as it indicated in its previous Orders, and the Commission proceeding approving the very accounting authority that enables the collection of these delta revenues has not completed.

III. CONCLUSION

IEU-Ohio urges the Commission to grant its Application for Rehearing, abrogate its Findings and Orders, and hold that it lacks subject matter jurisdiction over the AEP ESP case, the 2010 Initial Rate Increase Cases, and the Rider EDR Proceeding. If the Commission finds that it does have subject matter jurisdiction over these cases, IEU-Ohio requests the Commission grant rehearing and condition AEP-Ohio's ability to continue charging the rates approved in the Findings and Orders on AEP-Ohio affirmatively accepting its ESP and withdrawing its appeal of its approved ESP. Further, if the Commission finds that it does have subject matter jurisdiction over these cases and that AEP-Ohio can accept the benefits of the ESP while holding out its right to withdraw and terminate the ESP, the Commission should find that Rider EDR is subject to the maximum rate increases in the approved ESP and require further investigation

into the least cost carrying cost rate for deferred Rider EDR delta revenues. Finally, the Commission should remove the delta revenues associated with the Ormet interim reasonable arrangement from collection through the FAC until the Ormet Interim Reasonable Arrangement Case concludes.

Respectfully submitted,



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I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 5th day of February 2009, via first class mail, postage prepaid.


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