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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Riders.	)))))	**Case No. 10-155-EL-RDR**

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM IN OPPOSITION TO THE
OHIO CONSUMERS' COUNSEL APPLICATION FOR REHEARING**

On February 8, 2010, Columbus Southern Power Company and Ohio Power Company (AEP Ohio) filed this application to recover incremental capital carrying costs associated with environmental investments made during their three-year Electric Security Plan (ESP). This recovery process was explicitly provided for in AEP Ohio's ESP case at page 30 of the Commission's March 18, 2009 Opinion and Order. The Attorney Examiner in this case issued an Entry on April 8, 2010 which, among other things, set a schedule for the filing of comments/objections regarding the application by interested persons, including the Commission's Staff, April 30, 2010, and reply comments by May 10, 2010. Prior to that Entry, Industrial Energy Users-Ohio (IEU) submitted comments along with its Motion to Intervene. IEU did not file any additional comments. On April 30, 2010 the Staff filed its Comments and Recommendations and the Ohio Consumers' Counsel (OCC) filed its comments. AEP Ohio filed the reply comments on May 10. 2010. And the OCC filed additional comments again on June 1, 2010. After AEP Ohio

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filed an updated position on July 21, 2010 attempting to respond to the positions taken by the parties, the Commission issued a Finding and Order on August 25, 2010.

On September 24, 2010, OCC filed an application for rehearing again challenging the carrying charge rate approved for the environmental investments, the calculation method involving monthly accrual of carrying charges, and question the lack of an evidentiary hearing in this case. These rehearing arguments should be rejected as they amount to nothing more than re-argument and second-guessing the Commission's discretionary judgment in this case.

ARGUMENT

A. It was reasonable and lawful for the Commission to use the carrying charge approved in the ESP Cases

As a threshold matter, OCC's reliance (at 6) on R.C. 4905.22 and 4928.02(A) is misguided. R.C. 4905.22 requires utilities to provide adequate service and to follow the terms of approved tariffs - that statute has no relevance or application in attacking a Commission decision. Similarly, R.C. 4928.02(A) merely expresses a policy of ensuring consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service - that statute also has no relevance or application in attacking a Commission decision. Thus, OCC's reliance on these statutes is misguided.

The Commission's decision contained a robust and detailed discussion of the carrying charge-related issues, including already addressing each of OCC's rehearing arguments on this subject. First, as a general matter, the Commission's Finding and Order already explicitly disagreed with OCC's premise that AEP Ohio did not adequately support the proposed carrying charge:

The Commission finds that sufficient information has been presented in

> the updated application and supporting exhibits for the parties to evaluate the environmental investments at issue. After considering the application and updates, the comments, and positions of the parties to this case, the Commission finds that the application, as updated, does not appear to be unjust or unreasonable and, therefore, concludes that a hearing on the application is not necessary.

Finding and Order at 10. As a related matter, OCC's argument (at 6) that AEP Ohio needed to again demonstrate in this case that the carrying charge adopted in the ESP Cases was appropriate, after the Commission already approved it, is also misguided. As Again, the Commission already rejected OCC's position in its decision:

> As part of AEP-Ohio's ESP cases, the Commission evaluated and approved each component of the carrying cost rate, including the A&G component, for the Companies' environmental investments.^^ jj^ the ESP case, the Commission considered and rejected the arguments presented regarding the A&G component of the carrying cost calculation and incorporating the short-term cost of debt or other special finemcing into the carrying cost calculation. Ultimately, in the ESP cases, the Commission concluded that using the WACC was appropriate for the environmental investments and consistent with the Commission's decision in the Companies' previous cases.

Finding and Order at 10.

OCC also acknowledges (at 7) that it is the Commission's establish practice to use the most recently approved carrying charge rate. While OCC argues that this approach does not perfectly reflect present costs, that argument is flawed because it leads to the conclusion that the most recently approved rate would be inaccurately low as often as it would be inaccurately high. There is no basis to conclude that consumers are harmed or utilities benefit from this practical policy. Once again, the Commission fully and reasonably addressed OCC's arguments in its decision:

> The carrying cost in the ESP case is the most recent approved for AEP-Ohio. While we are mindful that using the most recent approved carrying cost rate increases the carrying charges, as OCC notes, it is the Commission's practice in subsequent proceedings to use the most recently

> approved carrying cost rate. Accordingly, we find it reasonable and appropriate to use the carrying cost rate approved in the Companies' ESP cases in this application, except as to the amendments recommended by Staff and agreed to by AEP Ohio and OCC, to conect the property tax component. For these reasons, the Commission finds that the issues raised regarding the carrying cost calculation for the Companies' EICCR rider have been adequately and reasonably addressed.

Finding and Order at 10.

In short, OCC's application for rehearing purely amounts to re-argument and nothing new is raised that has not already been fully and reasonably addressed in the Commission's Finding and Order.

B. It was reasonable and lawful for the Commission to adopt the monthly accrual calculation method for carrying charges

OCC also raises its same argument (at 8-9) that monthly accrual of carrying charges for the 2009 environmental investment is not appropriate, in its opinion, and claims that the Commission did not justify this approach. As AEP Ohio argued in its comments, however, this argument fails to recognize that in the ESP case AEP Ohio was not attempting to calculate the carrying costs they incurred during 2001-2008 on environmental investments made during that period. Instead, it was calculating the going forward carrying cost associated with those past investments. Accordingly, there was no need to perform a 2001-2008 monthly carrying cost calculation. In contrast, the Environmental Investment Carrying Cost Rider is focused on the carrying costs incurred in 2009 associated with the incremental 2009 environmental investment. Performing that calculation on a monthly basis is the proper way to determine the true carrying costs during this period. The Commission agreed with AEP Ohio's position in its decision:

> The Commission recognizes, as AEP-Ohio asserts, that in the ESP cases the Companies were calculating the carrying costs going forward for past

> environmental investments. AEP-Ohio based its annual capital carrying cost calculation in the ESP cases for 2009 - 2011 on annual estimates of environmental capital additions and utilized the one-half year convention to determine an average annual carrying costs (Cos. Ex. 7). Staff agrees with the process used to calculate the carrying costs in this case. In this application, the Commission finds AEP-Ohio's calculation of the carrying costs on a monthly basis is appropriate.

Finding and Order at 6-7. The Commission's determination in this regard is reasonable and lawful and OCC's bid to second-guess that decision is unfounded.

C. Conducting an evidentiary hearing was discretionary

Finally, OCC again argues (at 9-11) that the Commission erred in not conducting a hearing is based on its re-argument that AEP has provided insufficient detail regarding the environmental investments and appropriate carrying charge. OCC also references (at 10-11) its same factual arguments previously raised and addressed. This is clearly another instance of OCC second-guessing the Commission's determination that AEP Ohio did adequately demonstrate the appropriateness of the investment and proposed carrying charge. As demonstrated above, the Commission's Finding and Order includes a robust and detailed discussion of the carrying charge issues, including each of OCC's substantive claims. OCC's complaint of no hearing in this proceeding also ignores that the hearing and decision in the ESP Cases provide the basis for this rider proceeding. Conducting a hearing is simply not required by law and is a discretionary call for the Commission.

There is nothing that requires the Commission to conduct an evidentiary hearing in this case. OCC had ample opportunity to file its issue with the Commission and discuss the same with AEP-Ohio. The hearing requirement proposed by OCC simply

does not exist, and OCC cites no support for its contention. The Commission has control over its dockets and OCC's disagreement on factual calls should not be considered. The Staff's Comments and Recommendations reflect its conclusions based on an extensive investigation utilizing requests for information and site visits. Thus, OCC's assertion that a hearing is required is without merit.

OCC also argues that the carrying cost rate proposed by AEP Ohio is the same as the rate explicitly approved by the Commission in the ESP cases relative to the 2001-2008 environmental investments. In place of the Commission-approved carrying cost rate, OCC recommends the use of only each Company's average cost of debt. Once again, OCC misses the point.

The carrying cost rate in this proceeding is applicable to the environmental plant -- typical rate base assets. While a different carrying cost rate might be applicable for a regulatory asset that is not a rate base asset; that is not the situation in this proceeding. Likewise, OCC's proposal for using the short-term debt rate must be rejected. AEP Ohio's environmental plant investments are financed by each Company's weighted average cost of capital. There is no basis to distinguish the carrying cost rates approved by the Commission in the Companies' ESP cases for the 2001-2008 environmental investments from the appropriate carrying cost rates to be applied to the environmental investments made during the 2009-2011 ESP period.

OCC's comments miss the mark when it argues that the proposed riders "will allow the Companies to fully recover the annual financing cost of all their 2009 environmental investments within a very short period of time." (OCC Comments, p. 8). The cost of carrying these investments continues for the life of the investment. This is

not a matter of short-term financing. Finally, OCC's other carrying cost rate issues discussed at page 8 of its comments were rejected by the Commission in AEP Ohio's ESP case, and should be rejected again. (See OCC's ESP Post-Hearing Brief, pp. 71-73; Commission's March 18, 2009 Opinion and Order, pp. 24-28).

OCC states that AEP Ohio has not sufficiently detailed the 2009 environmental investments on which it requests to recover carrying costs. OCC characterized the data as a "terse identification of projects" (OCC Comments, p. 3). Each Company's Schedule 2 to the application is much more detailed than OCC would have the Commission believe.

Projects are identified and disclose the purpose of the investments. These purposes include environmental compliance investments for such things as precipitators, flue gas desulfurization, selective catalytic reduction, etc. In addition, for each category of projects the investment amount for each month is shown to the nearest thousand dollars. It is not clear what kind of detail OCC is looking for in this instance. Does OCC believe that the application should show, for instance, how much steel was erected each month for each project? In any event, the Staff investigated the application and has not recommended the disallowance of any of the projects AEP Ohio included in the application.

In connection with this issue, OCC claims that "carrying costs associated with environmental investments that were made in 2009 in order to meet already-existing environmental regulations should already be reflected in existing rates." (*Id.* at 4). OCC does not explain how such rate recovery would have been accomplished. AEP Ohio does

not have in rates any carrying costs on 2009 environmental investments. OCC's argument must be rejected.

Finally, OCC asserts that only environmental investments associated with complying with new post-Rate Stabilization Plan environmental requirements are eligible for carrying cost recovery. OCC is simply wrong. There was no such condition imposed by the Commission when it approved AEP Ohio's carrying cost recovery process.

OCC also claims that based on two AEP Ohio responses to OCC discovery, certain of the environmental investments should not be included in the application. OCC asserts those investments were "resulting from the Consent Decree." (*Id.* at 5).[1] Since OCC's comments mischaracterize the discovery responses (one for CSP and one for OPCO) those responses are attached to these Reply Comments. As can be seen from these responses, for those projects for which reference is made to NSR (New Source Review Consent Decree) reference also is made to CAIR (Clean Air Interstate Rule).

As the Consent Decree states, AEP denied the alleged NSR violations, and the Consent Decree was entered without adjudication of any claims or any finding that actual violations occurred. (Consent Decree, pp. 3 and 4). Historically, AEP has operated its generation facilities to at least meet the requirements of permits issued by the applicable federal or state environmental regulatory authorities. AEP voluntarily entered into the Consent Decree to settle the claims of the plaintiffs while lowering the emissions of its eastern fleet, consistent with the requirements necessary to comply with the Clean Air Interstate Rule, in a least-cost approach.

[1] The Consent Decree in *U.S. v. American Electric Power Service Corp.*, Civil Action No. C2-99-1250 (S.D. Ohio).

The inclusion for ratemaking purposes of the environmental investments required by the settlement is appropriate as these costs are associated with pollution control projects that benefit the environment, and are compliance costs that arise from CAIR as well as with the entry of the Consent Decree.

OCC also asserts that the inclusion of these projects would result in customers being forced to pay the penalties included in the Consent Decree. In the Consent Decree the specific pollution control retrofit requirements and the Civil Penalty are listed separately, underscoring the fact that the requirements regarding technology retrofits are not a penalty, but were included as part of the conditions to reach a settlement in the case.

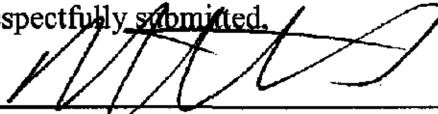
Also on page 5 of OCC's Comments it states that "Included in the settlement, AEPSC could use Clean Air Interstate Rule (CAIR) emissions allowances to pay stipulated penalties." No such provision appears anywhere in the Consent Decree, nor have any CAIR allowances been used to offset any portion of the civil penalty included as part of the settlement. In addition, this application does not request ratemaking recognition for any part of the $15 million civil penalty agreed to in the Consent Decree. OCC's arguments regarding the NSR Consent Decree are unfounded and should be rejected.

For these reasons, it is not correct for the OCC to suggest that all project costs associated with compliance with the NSR Consent Decree as well as with CAIR be disallowed. These costs are not penalties, and the carrying costs associated with these projects should be allowed to be recovered as incremental environmental investments based on the applicable rules in the State of Ohio.

CONCLUSION

The Commission's decision in this case is lawful and reasonable and OCC's attempt to re-argue the case and second-guess the Commission's discretion should be rejected.

Respectfully submitted,



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ATTACHMENTS

COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S RESPONSE TO OCC's DISCOVERY REQUESTS CASE NO. 10-155-EL-RDR SECOND SET

INTERROGATORIES

INT-23 CSP's Application, filed on February 8, 2010, contained a CSP Schedule 2, which listed ten major projects Please indicate for each listed major project, all enforceable environmental final regulation(s), permit(s) or order(s) that CSP contends required CSP to incur environmental investments whose carrying costs are part of this tariff

RESPONSE

See the following table for the list of environmental regulations that necessitated CSP to incur environmental investments associated with the projects listed in CSP Schedule 2.

Major Project	Enforceable Environmental Final Regulation(s), Permit(s), or Order(s) that CSP Contends required CSP to Incur Environmental Investments
Conesville Unit 4 FGD	Clean Air Interstate Rule (CAIR)*, New Source Review Consent Decree (NSR)
Conesville Unit 4 SCR	CAIR, NSR
Conesville Unit 5 FGD	CAIR, NSR
Conesville Unit 6 FGD	CAIR, NSR
Stuart Units 1-4 FGD	CAIR
Associated SO2 Landfill	CAIR, Residual Solid Waste Permit
Mercury	Clean Air Mercury Rule (CAMR)**, National Pollutant Discharge Elimination System (NPDES)
NOx Assoc	CAIR, NSR
Other FGD	CAIR,
Other Environmental	CAIR, NPDES, Title V Air Permit, Residual Solid Waste Permit

* The DC Circuit Court remanded the CAIR to the EPA for revision

** CAMR required Continuous monitoring of mercury emissions beginning on 1-1-2009, but the CAMR was vacated after procurement and installation of monitors began

COLUMBUS SOUTHERN POWER COMPANY'S AND
OHIO POWER COMPANY'S RESPONSE TO OCC's
DISCOVERY REQUESTS
CASE NO. 10-155-EL-RDR
SECOND SET

INTERROGATORIES

INT-35 OPC's Application, filed on February 8, 2010, contained an OPC Schedule 2, which listed thirteen major projects. For each listed major *project, please identify all enforceable environmental final regulation(s),* permit(s) or order(s) that OPC contends required OPC to incur environmental investments whose carrying costs are part of this tariff.

RESPONSE

See the following table for the list of environmental regulations that necessitated OPCo to incur environmental investments associated with the projects listed in OPCo Schedule 2

Major Project	Enforceable Environmental Final Regulation(s), Permit(s), or Order(s) Necessitating OPCo to Incur Environmental Investments
Amos Unit 3 Precipitator	Title V National Ambient Air Quality Standards
Amos Unit 3 Ash Disposal	National Pollutant Discharge Elimination System (NPDES)
Amos Unit 3 FGD	Clean Air Interstate Rule (CAIR)*, New Source Review Consent Decree (NSR)
Amos Unit 3 SCR	CAIR, NSR
Cardinal Unit 1 FGD	CAIR, NSR
Kammer Units 1-3 Fuel Switch	CAIR, NSR
Mitchell Unit 1 FGD	CAIR, NSR
Mitchell Unit 2 FGD	CAIR, NSR
Associated SO2 Landfill	

	CAIR, Residual Solid Waste Permit (OH), Solid Waste Permit (WV)
Mercury	Clean Air Mercury Rule (CAMR)**, NPDES
NOx Assoc	CAIR, NSR
Other FGD	CAIR, NSR
Other Environmental	CAIR, NSR, NPDES, Residual Solid Waste Permit (OH), Solid Waste Permit (WV)

* The DC Circuit Court remanded the CAIR to the EPA for revision.

** CAMR required Continuous monitoring of mercury emissions beginning on 1-1-2009, but the CAMR was vacated after procurement and installation of monitors began

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Memo Contra has been served upon the below-named counsel via First Class mail, postage prepaid, this 4th day of October, 2010.

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