

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company and Columbus) Case No. 10-2376-EL-UNC
Southern Power Company for Authority)
to Merge and Related Approvals.)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to) Case No. 11-346-EL-SSO
Establish a Standard Service Offer) Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)
in the Form of an Electric Security Plan.)

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 11-349-EL-AAM
Ohio Power Company for Approval of) Case No. 11-350-EL-AAM
Certain Accounting Authority.)

In the Matter of the Application of)
Columbus Southern Power Company to) Case No. 10-343-EL-ATA
Amend its Emergency Curtailment)
Service Riders.)

In the Matter of the Application of)
Ohio Power Company to Amend its) Case No. 10-344-EL-ATA
Emergency Curtailment Service Riders.)

In the Matter of the Commission Review)
Of the Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
Company and Columbus Southern)
Power Company.)

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 11-4920-EL-RDR
for Approval of a Mechanism to Recover)
Deferred Fuel Costs Ordered Under)
Ohio Revised Code 4928.144)

In the Matter of the Application of)
Ohio Power Company for Approval of a)
Mechanism to Recover Deferred Fuel) Case No. 11-4921-EL-RDR
Costs Ordered Under Ohio Revised)
Code 4928.144)

**OHIO ENVIRONMENTAL COUNCIL'S RESPONSE TO APPLICATION FOR
REHEARING FILED BY FES AND IEU**

Pursuant to RC 4903.10 and Rule 4901-1-35(b), Ohio Administrative Code, the Ohio Environmental Council (“OEC”) submits its Reply to the Applications for Rehearing filed by First Energy Solutions Corp. (“FES”) and Industrial Energy Users (“IEU”). The OEC opposes such Applications for Rehearing to the extent each of these parties argues the Commission’s December 14, 2011 Opinion and Order was unlawful as it allowed for placeholder riders, specifically, the Generation Resource Rider (“GRR”) and Combined Heat and Power Rider (“CHP”), for the yet determined costs associated with the Turning Point, MR 6 and CHP projects. Contrary to the assertions of the above referenced parties, these placeholders and their respective riders are permissible considerations for the Commission in accordance with RC §4928.143 and they do not violate any important regulatory principle or practice.

1) The Generation Resource Rider set at a value of zero, is consistent with §4928.143(B)(2) and does not violate any important regulatory principles or practices.

RC §4928.143 spells out the requirements for approval of electric security plans (“ESP”). RC §4928.143(B)(2)(b) and (c) allow for recovery of construction costs via a nonbypassable surcharge for the life of the facility when certain criteria are met. The use of the GRR as a placeholder affords the Commission, as well as the parties, the opportunity at subsequent proceedings to fully evaluate whether AEP satisfies all of the criteria necessary to establish appropriate cost recovery and surcharges, including whether sufficient need exists. In addition, as will be demonstrated below, other electric utilities have utilized placeholders set a zero and they have been approved by the Commission. Therefore, the GRR placeholders are reasonable and lawful.

As stated previously throughout these proceedings, in Paragraph IV.1.d of the Stipulation, in the Signatory Parties' Joint Brief (at 49-52), and the Commission's Opinion and Order (O&O) at 39-40, the Generation Resource Rider shall act as a placeholder with a value of zero only until such time as the Commission approves any project-specific costs to be included in the GRR. No value has been assigned to any of these riders and the parties have retained their rights to advocate in support of or in opposition to the riders in subsequent proceedings. Absolutely no arguments have been waived. Therefore, the placeholders result in no harm or prejudice to any of the parties. In addition, without the use of the placeholders, the Commission has no means by which to evaluate the merits of either the Turning Point, MR 6 or CHP projects within the term of this ESP. Therefore, the failure to adopt the GRR as a placeholder, results in harm and prejudice to AEP; not the opposing parties.

Both FES and IEU challenge the use of the Generation Resource Rider (GRR) as a placeholder with an initial value of zero because it does not satisfy and of the provisions enumerated in RC §4928.143(B)(2). Both parties rely, in part, on *In re Application of Columbus S. Power Co.*, 128 Ohio St. 3d at 520, however, their reliance on this case is misplaced. In *Columbus Southern Power* the Ohio Consumers Counsel ("OCC") argued §RC 4928.143(B)(2) did not permit recovery of certain carrying costs associated with environmental investments. OCC argued and the Supreme Court agreed that §RC 4928.143 allowed "any of the listed items," not "any item." The list was to be interpreted as being "illustrative" and not "exhaustive." The Court reversed the Commission's legal determination that §RC 4928.143(B)(2) permits ESPs to include *unlisted* items. The court did not, however, make a determination as to whether the contested costs were or were not one of the enumerated items. Instead, the court remanded the matter back to the Commission for the Commission to

determine whether any of the listed categories of (B)(2) authorize recovery of environmental carrying charges. Therefore, it is totally within the purview of the Commission to determine whether the GRR placeholders are consistent with §RC 4928.143(B)(2) and in this case the Commission was correct when it determined the placeholders set at zero were proper.

In fact there is precedent before the Commission for the use of such placeholders when set at zero. The Commission has accepted such placeholders in previous proceedings for AEP Ohio, Duke Energy-Ohio and the First Energy operating companies. In the March 30, 2009 Entry in Case Nos. 08-917 and 08-918 EL-SSO, the Commission approved AEP Ohio's Compliance Tariffs which included the Economic Development Rider with a value of zero and an Energy Efficiency and Peak Demand Reduction Rider set at zero; and in a March 18, 2009 O&O, it approved the Environmental Investment Carrying Charge Rider without a set rate. Also in Duke Energy-Ohio's initial ESP, Case No. 08-920-EL-SSO, et al., the commission approved Rider DR-IM to be set at zero subject to periodic adjustments. (Joint Reply Brief of Undersigned Parties at 29-30). In fact, First Energy utilized a similar mechanism with a zero value in its first ESP case (Case No. 08-935-EL-SSO.) "Staff agreed with FE that the rider should be funded at \$0 and used as a placeholder in the event costs exceeded the \$50 million threshold." (Joint Reply Brief at 30 citing December 19, 2008 Opinion and Order at 31.) With such precedent utilized by the Commission, it is disingenuous at best for these parties to argue the use of a placeholder as unlawful.

In further support of the concept of placeholder riders, OEC respectfully adopts and reiterates the arguments previously advanced in the Joint Reply Brief of the Undersigned Parties as follows: The GRR advances SB 221 requirements that allow for recovery of EDU-owned or operated generation facilities (at 28); any charges approved under the GRR must comply with

§RC 4928.143(B)(2)(b) and (c) as determined by the Commission; the GRR is necessary and beneficial in pursuing the development of Ohio shale gas via the MR 6 project as well as in-state solar power via the Turning Point project (at 28); the use of the GRR acts as a “cost hedge” against market rates promoting rate stability (at 28); and finally, all parties reserved their rights to debate and argue the merits, including the need for additional generation capacity in future proceedings (at 28). As such the GRR as a placeholder set at zero is reasonable, lawful and does not violate any important regulatory principles or practices.

As stated previously placeholders for the GRR set at zero are reasonable and lawful especially when one recognizes no prejudice will result. When seeking authorization from the Commission for cost recovery through the GRR, AEP must demonstrate how the proposed project satisfies all applicable requirements set forth in §RC 4928.143(B)(2)(b) and (c), including that of necessity. The Commission explicitly noted, “... in permitting the creation of the GRR, it is not authorizing the recovery of any costs for the Companies but is allowing for the establishment of a placeholder mechanism and ... any recovery under the GRR must be authorized by the Commission. The Commission cannot and will not approve any recovery unless the Companies meet their burden set forth in §RC 4928.143(B)(2).” (See O&O at 39.) The Commission further reiterated that none of the Signatory Parties are obligated to take a position in support or opposition to any potential nonbypassable charges by sponsoring the Stipulation. *Id.* All parties have reserved their rights to debate and argue those issues in future proceedings. Therefore, no prejudice or harm will result to any party to these proceedings. As the Commission noted, the arguments posed by FES and IEU are premature.

2) The Commission was correct when it determined AEP Ohio may demonstrate in a separate proceeding that the Turning Point project is necessary under §RC 4928.143(B)(2)(c) if it is needed by AEP Ohio to comply with the solar benchmarks in §RC 4928.64.

The Commission is well aware of its statutory authority. The Commission understands generation projects funded by the GRR, or any other surcharge authorized by §RC 4928.143(B)(2), must satisfy all necessary criteria while advancing the policy provisions contained in §RC 4928.02, and the statutory mandates contained in §RC 4928.64 (O&O at 39-40). In discussing the Turning Point project, the Commission correctly noted AEP-Ohio will have to demonstrate both that the project satisfies all criteria imposed by §RC 4928.143(B)(2) and that Turning Point is necessary to comply with the solar renewable energy resource provision. The burden of satisfying all criteria lies with AEP Ohio and the GRR placeholders affords all parties the opportunity to support or oppose these issues in future proceedings.

In addition, the Commission has the authority to make findings in the most efficient manner. The Supreme Court has recognized the broad discretion of the Commission in managing its dockets to avoid undue delay and duplication of effort. §4901.13, *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St. 2d 367, 379. “It is well settled that pursuant to R.C. 4901.13, the Commission has the discretion to decide, how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort.” *Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 559, 560. FES’s argument that the commission cannot acknowledge the Turning Point project via a placeholder in the ESP is not well founded. As stated previously, if the Commission was not able to utilize a placeholder, it would be deprived of considering these projects in future proceedings.

Conclusion:

The use of placeholders, both in terms of the GRR and the CHP, are proper within the context of §4928.143(B)(2) and the Commission was within its authority when it approved the use of such placeholders. In addition, the Commission has the authority to manage its dockets in a manner that promotes efficiency and reduces duplication of efforts. Therefore, the use of a placeholder at this juncture in order to examine the Turning Point, MR 6 or CHP projects, at a subsequent proceeding is proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply to Application for Rehearing, was served upon the persons listed below via electronic mail on this 23rd day of January, 2012.

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1/23/2012 3:27:27 PM

in

Case No(s). 10-2376-EL-UNC, 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Reply To Application for Rehearing Filed by FES and IEU electronically filed by Ms. Cathryn N. Loucas on behalf of The Ohio Environmental Council