

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Respectfully submitted,  
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To advocate that residential consumers of Ohio Power Company (“OP”) and Columbus Southern Power Company (“CSP”) (collectively, “Company” or “AEP Ohio”)<sup>1</sup> should receive adequate service at reasonable rates, the Office of the Ohio Consumers’ Counsel (“OCC”) files this application for rehearing of the Opinion and Order (“O&O”) issued by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) in the above-captioned proceedings on January 23, 2012. OCC is authorized to file this application for rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

In the O&O, the PUCO credited an under-collection balance in OP’s fuel adjustment clause (“FAC”) for the realized value of a 2008 lump sum payment that was already credited against OP’s 2009 and 2010 FAC, as well as the booked value of a West Virginia coal reserve. The PUCO, however, stopped short of crediting the full value of the coal reserve to customers, above the amounts credited and booked.<sup>2</sup> The PUCO also determined that the effect of a delivery shortfall agreement and a contract support

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<sup>1</sup> Effective at the end of 2011, OP and CSP (both of which were operating companies of AEP Ohio) merged, with OP becoming the successor in interest to CSP. See *In re: AEP Ohio ESP Cases*, Case No. 11-346-EL-SSO, et al. (“ESP 2”), OP Application for Rehearing (January 13, 2012) at 2.

<sup>2</sup> O&O at 12.

agreement would apply in time periods outside of the current audit.<sup>3</sup> For this reason the Commission declined to examine the agreements.

The O&O was unreasonable and unlawful in the following respects:

- A. The Commission erred in failing to require that the entire value of the West Virginia coal reserve (to be determined in a subsequent audit), along with interest, be credited to OP's customers to reduce their payments for fuel, above and beyond the \$41 million already ordered to be credited to them.
- B. The Commission erred in failing to order the Company to credit customers for the interest accrued from 2009 until January 23, 2012 on the \$30 million lump sum payment received by AEP Ohio and the \$41 million booked value for the West Virginia coal reserve.
- C. The Commission erred in failing to appoint an independent auditor to value the coal reserve.
- D. The Commission erred in failing to order the Company to credit customers for the increased price per ton that AEP Ohio agreed to pay for coal during 2009, as part of the Contract Support Agreement, and to account for the total cost increase as a deferred expense with no carrying costs.

The grounds for this application for rehearing are set forth in the accompanying Memorandum in Support.

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<sup>3</sup> Id. at 14.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

The Company’s first electric security plan (“ESP”), modified and approved by the PUCO in 2009,<sup>4</sup> established a FAC and an annual audit of the FAC. The above-captioned proceedings centered upon the financial and management/performance audits for 2009 conducted by Energy Ventures Analysis, Inc. (“EVA”) and its subcontractor, Larkin and Associates.

The audits focused, inter alia, on two contract events that are germane to this application for rehearing. These two contract events account for a significant amount of the fuel expense under-collection that has occurred,<sup>5</sup> which AEP Ohio’s customers (excluding residential customers) have begun to pay through the Company’s phase-in recovery rider (“PIRR”).<sup>6</sup>

The first contract event responsible for a great deal of AEP Ohio’s under-collection of fuel expenses was AEP Ohio’s decision to increase the contract price paid

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<sup>4</sup> *In re: AEP-Ohio ESP Cases*, Case Nos. 08-917-EL-SSO, et al. (“ESP 1”), Opinion and Order (Mar. 18, 2009).

<sup>5</sup> See Report of the Management/Performance and Financial Audits of the FAC of the Columbus Southern Power Company and The Ohio Power Company (May 14, 2010) (“Management Performance Report”), page 1-5.

<sup>6</sup> Under the stipulation in the Company’s second ESP, modified and approved by the PUCO, residential customers do not begin paying the PIRR until January 1, 2013. See ESP 2, Stipulation and Recommendation (September 7, 2011) (“ESP 2 Stipulation”) at 26-27.

for coal in 2009 under two contracts, with the option to acquire coal at a discount off the market price per ton for two three-year extensions of the agreement beginning in 2013.<sup>7</sup> This was characterized as the “2008 Contract Support Agreement.” The second contract event was a coal supplier’s buyout of a coal contract with the Company in 2007. This buyout was structured as a “Settlement Agreement,” where in return for AEP Ohio agreeing to terminate the long-term supply contract the coal supplier gave the Company a \$30 million lump sum payment and a coal reserve in West Virginia.<sup>8</sup> The Company booked the coal reserve as an unregulated asset in 2008, and valued it at \$41 million.<sup>9</sup>

The auditor recommended that the Commission review whether any proceeds from the Settlement Agreement (i.e., the 2008 lump sum payment AEP Ohio received as well as the West Virginia coal reserve) should be credited against OP’s FAC under-collection.<sup>10</sup> The credit would benefit customers by reducing the amount of money that the Company would collect from them for fuel costs. Both OCC and IEU presented testimony pertaining to this recommendation. Both recommended that the Commission order that the Company’s customers receive the financial benefits from the fuel procurement contracts.<sup>11</sup> IEU in testimony and on brief addressed the 2008 Contract Support Agreement issue, and OCC supported IEU’s proposed treatment of this issue.<sup>12</sup>

In its O&O, the Commission ordered that the Company credit the realized value from the Settlement Agreement – i.e., the portion of the \$30 million 2008 lump sum

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<sup>7</sup> See Management Performance Report, page 1-5.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> See O&O at 5.

<sup>11</sup> See OCC Exhibit 1 at 4-5; IEU Exhibit 1 at 3-9.

<sup>12</sup> See IEU Exhibit 1 at 9-12; IEU Initial Brief at 14-17; OCC Initial Brief at 10-12.

payment not already credited as well as the \$41 million value of West Virginia coal reserve that AEP Ohio had booked when the Settlement Agreement was executed – against OP’s FAC under-collection, thus reducing customers’ payments to AEP Ohio for fuel costs.<sup>13</sup> The Commission also found that the present value of the coal reserve is not clear, especially since AEP Ohio had planned to begin the permitting process, which would enhance the value.<sup>14</sup> The Commission ordered AEP Ohio to hire an auditor to examine the value of the coal reserve and to make a recommendation to the PUCO as to whether the increased value should accrue to the benefit of OP customers beyond the value of the reserve that AEP Ohio booked under the Settlement Agreement.<sup>15</sup> With respect to the 2008 Contract Support Agreement, the Commission determined that “any effect these agreements may have had on AEP-Ohio’s fuel costs, if any, would appear to apply in time periods outside the current audit. Therefore, while those agreements may be examined by a future audit, these agreements will not be further examined as part of the current audit.”<sup>16</sup> It is these findings that the OCC seeks rehearing on.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC filed a motion to intervene in this

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<sup>13</sup> O&O at 12.

<sup>14</sup> Id

<sup>15</sup> Id.

<sup>16</sup> Id. at 14.



proceeding on October 28, 2009, which was granted by the Commission in a Finding and Order issued on January 7, 2010 (at 3).

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard for modifying the O&O is met here.

### **III. ARGUMENT**

- A. The Commission erred in failing to require that the entire value of the West Virginia coal reserve (to be determined in a subsequent audit), along with interest, be credited to OP’s customers to reduce their payments for fuel, above and beyond the \$41 million already ordered to be credited to them.**

The 2007 Settlement Agreement arose from a contract dispute between the Company and the coal supplier; in effect, the supplier bought out the contract with AEP Ohio for the time period after 2008. For agreeing to terminate the original lower-priced coal supply contract, the Company received a \$30 million lump sum payment and the coal reserve in West Virginia from the coal supplier. The Company booked the coal

reserve as an unregulated asset in 2008.<sup>17</sup> Instead of ordering an immediate credit to customers of the entire value of the coal reserve, however, the Commission deferred judgment on part of the issue until after the auditor – who the Commission ordered to be hired in the O&O – issues its report.<sup>18</sup>

The Commission determined that “all of the *realized* value from the Settlement Agreement should be credited against OP’s FAC under-recovery namely the portion of the \$30 million 2008 lump sum payment not already credited to OP ratepayers as well as the \$41 million value of the West Virginia coal reserve that AEP booked when the Settlement Agreement was executed.”<sup>19</sup> The Commission, however, did not indicate how the credit should occur, i.e., against the PIRR over time or as an immediate credit, as OCC recommended.<sup>20</sup>

This is an important issue to residential customers, especially due to the operation of the PIRR in the Company’s ESP 2. The PIRR is the mechanism for collecting the FAC deferrals caused in 2009-2011 under the ESP 1 caps. Under the Company’s ESP 2, collection of the PIRR for *residential customers* is delayed until January 1, 2013. Depending on the progress of any possible securitization of the FAC deferral balance, carrying costs related to the delay in collection may accrue.<sup>21</sup>

Immediate crediting against the balance of the FAC deferrals related to residential customers – rather than waiting to credit residential customers’ bills when the PIRR becomes effective for residential customers – is crucial. This is because during the year

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<sup>17</sup> See id. at 4.

<sup>18</sup> Id. at 12.

<sup>19</sup> Id. (emphasis added).

<sup>20</sup> See OCC Initial Brief at 17-18.

<sup>21</sup> See ESP 2 Stipulation at 26-27.

that the PIRR is not collected from residential customers, carrying charges may accrue, costing residential customers money for the delay. If instead there is an immediate credit to the residential portion of the deferrals, customers may avoid having to pay future carrying charges, which would then reduce the ultimate amount that customers would be charged through the PIRR starting in 2013.

Waiting to credit the value of the West Virginia coal reserve to customers through the PIRR would unnecessarily add to the amounts to be collected from residential customers in the PIRR starting in 2013. It was unreasonable for the Commission to fail to specify that the value of the West Virginia coal reserve should be credited to customers immediately.

In addition, the entire increased value of the coal reserve should accrue to the benefit of OP's customers, above and beyond the \$41 million already required to be credited, when the value is determined. There is no need to wait until the auditor has made its recommendation before ordering the Company to credit the entire increased value of the coal reserve to customers.

It was unreasonable for the Commission to not specify that the Company immediately credit the \$41 million to customers. It was also unreasonable that the Commission did not order the Company to credit the entire increased value of the coal reserve to customers when the valuation is made. The Commission should modify the O&O accordingly, in the interest of reducing as soon as possible the amount customers pay for electricity.

**B. The Commission erred in failing to order the Company to credit customers for the interest accrued from 2009 until January 23, 2012 on the \$30 million lump sum payment received by AEP Ohio and the \$41 million booked value for the West Virginia coal reserve.**

EVA's audit report determined that AEP Ohio experienced an under-collection of \$37.5 million for CSP and \$297.6 million for OP at the end of the first year of the FAC.<sup>22</sup> Although many factors contributed to the under-collection from customers, the two coal contract events – the increase in the contract price under two contracts in 2009 and the buyout of the coal contract at the end of 2007, which resulted in an increase in 2009 fuel expenses – accounted for more than half of OP's under-collection.<sup>23</sup> The auditors noted that the buyout was unique, as it occurred during a period in which fuel cost collection was not regulated (through the FAC) yet the entire value received was for tons of coal that would have been shipped during the ESP period (at a later date).<sup>24</sup> The contract was an OP asset and, had there not been an early termination of the contract, the value associated with it (i.e., the original contract with a lower price for coal) would have flowed through to OP customers through the ESP period.<sup>25</sup>

The audit report recommended that, in order to ensure that customers are treated equitably, the Commission review whether any proceeds from the 2008 lump sum \$30 million payment, as well as the West Virginia coal reserve, should be credited against OP's FAC under-collection.<sup>26</sup> In its O&O, the Commission determined that all of the realized value from the 2008 buyout – namely the portion of the \$30 million 2008 lump

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<sup>22</sup> See O&O at 4.

<sup>23</sup> See id.

<sup>24</sup> See id. at 5.

<sup>25</sup> See id.

<sup>26</sup> See id. at 6.

sum payment not already credited to OP's customers as well as the \$41 million value of the West Virginia coal reserve that AEP Ohio booked when the Settlement Agreement was executed – should be credited against OP's FAC under-collection so as to reduce the amount customers pay for fuel.<sup>27</sup> The Commission ordered the Company to make the credit against the FAC under-collection.<sup>28</sup>

The Commission, however, failed to order that the credit to customers include interest on the lump sum payment and the entire value of the West Virginia coal reserve. The Company has been able to use the portion of the lump sum payment that was not credited against the 2009 FAC since the buyout in 2008, and will continue to be able to use the proceeds until the remainder is credited to customers. The Company should not benefit from the use of funds that should have been credited to the Company's customers years ago. In addition, the \$41 million booked value of the West Virginia coal reserve is realized value from the Settlement Agreement that should have accrued to the benefit of customers. The Commission erred in not ordering the Company to include interest on the value of the Settlement Agreement as part of the credit to customers.

The Company was quick to ask customers to pay carrying charges on the under-collection of fuel expense for the January 2009 through June 2009 period<sup>29</sup>; it should be just as quick to pay interest to customers on funds that should have been, but are not yet, credited to customers. The Commission should modify the O&O by requiring the Company to pay interest to customers, dating to 2008, on the portion of the \$30 million

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<sup>27</sup> Id. at 12.

<sup>28</sup> Id. at 19.

<sup>29</sup> See Application, CSP Schedule 3, page 1 and OP Schedule 3, page 1.

lump sum payment that was not credited to customers and on the \$41 million booked value of the West Virginia coal reserve.

**C. The Commission erred in failing to appoint an independent auditor to value the coal reserve.**

In the O&O, the Commission found that the value of the West Virginia coal reserve is not clear at this time, but that the value of the coal reserve would undoubtedly increase because the Company had planned to begin the permitting process at the time of the audit.<sup>30</sup> The Commission determined that an audit was needed to examine the value of the West Virginia coal reserve, and that the Commission would issue a Request for Proposal at a later date to hire the auditor.<sup>31</sup>

But instead of hiring an independent auditor, the Commission “direct[ed] *AEP to hire an auditor* specifically to examine the value of the West Virginia coal reserve and to make a recommendation to the Commission as to whether the increased value, if any above the \$41 million already required to be credited against OP’s under-recovery, should accrue to OP ratepayers beyond the value of the reserve that AEPSC booked under the Settlement Agreement.”<sup>32</sup> The Commission erred by not hiring an independent auditor to review the value of the West Virginia coal reserve and to make recommendations for Commission action.

An independent auditor will ensure that any biases on the Company’s part are not reflected in the audit. This can only be accomplished by an independent, outside

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<sup>30</sup> O&O at 12.

<sup>31</sup> Id.

<sup>32</sup> Id. (emphasis added).

auditor.<sup>33</sup> As with the financial and management/performance audits conducted by EVA, the Commission should solely direct the auditor.<sup>34</sup> Any conclusions, results, or recommendations formulated by the auditor should be available for examination by participants to this proceeding.<sup>35</sup>

Millions of dollars that should belong to customers may be at stake in the valuation of the coal reserve assets. The audit process should not be conducted at the direction of the Company, but instead should be independent in order to facilitate a fair and unbiased process. The auditor should be selected by the Commission, and the audit should be conducted under the Commission Staff's control. In addition, OP's shareholders should pay for the audit.<sup>36</sup>

It was unreasonable for the Commission to allow the Company – the very entity that is not using the funds to reduce customer bills – to hire the auditor that will examine the value of the West Virginia coal reserve and make recommendations as to whether OP's customers should receive a credit for the increased value of the reserve. The Commission should modify the O&O to clarify that the Commission will select the auditor, that the audit will be conducted under the Commission Staff's direction and that OP's shareholders will pay for the audit.

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<sup>33</sup> See, e.g., *In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI, Entry (October 18, 2000) at 2.

<sup>34</sup> See Entry (November 18, 2009) at 2.

<sup>35</sup> *Id.*

<sup>36</sup> See R.C. 4903.24. See also Entry (November 18, 2009) at 2.

**D. The Commission erred in failing to order the Company to credit customers for the increased price per ton that AEP Ohio agreed to pay for coal during 2009, as part of the Contract Support Agreement, and to account for the total cost increase as a deferred expense with no carrying costs.**

Under the 2008 Contract Support Agreement, CSP agreed to increase the base price for a certain tonnage of coal during 2009, with the option for CSP to acquire coal at a discount off the market price per ton for two three-year extensions of the agreement beginning in 2013. To prevent the Company from recovering more fuel cost from its customers than it should under law, OCC urged the Commission to order that AEP Ohio's customers shall receive the financial benefits from the Company's fuel procurement contracts in the form of immediate credits to the Company's FAC deferral balance.<sup>37</sup> The financial benefits that should be provided to customers include the fair value of the coal market price discount option for future coal delivery negotiated as part of the 2008 Contract Support Agreement. An immediate credit is necessary to ensure that OP's customers do not pay more than necessary for carrying charges associated with OP's fuel cost deferral, which can exceed \$10 million every three months.<sup>38</sup>

In the O&O, however, the Commission refused to order the credits. The Commission determined that any effect the agreement may have had on the Company's fuel costs would appear to apply in time periods outside of the audit conducted in this proceeding.<sup>39</sup> The Commission stated that "while those agreements may be examined by

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<sup>37</sup> See OCC Initial Brief at 17-18.

<sup>38</sup> OCC Ex. 1 at 16.

<sup>39</sup> O&O at 14.



a future audit, those agreements will not be further examined as part of the current audit.”<sup>40</sup> The Commission erred in its determination.

The audit in this proceeding covered the year 2009. Under the 2008 Contract Support Agreement, the Company increased the base price it paid for coal during 2009, with the option to purchase coal at a discount in later years. Thus, the effect of the agreement was to increase the Company’s fuel cost during 2009, the year under audit in this proceeding. The result is that the Company’s customers will be charged more for the fuel component of their electricity usage, based on the higher cost of fuel that the Company incurred in 2009 under the 2008 Contract Support Agreement.

The Commission should rectify this error by modifying the O&O. The Commission should order the Company to immediately credit customers the fair value of the coal market price discount option for future coal delivery negotiated as part of the 2008 Contract Support Agreement to ensure that they do not pay the carrying charges associated with OP’s fuel cost deferral.

#### **IV. CONCLUSION**

In its O&O, the Commission erred in several respects in its treatment of the lump sum payment and the West Virginia coal reserve. These errors are costing consumers regarding their payments to AEP Ohio. To protect consumers, the Commission should grant OCC rehearing and modify the O&O as OCC recommends herein.

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<sup>40</sup> Id.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was served via regular U.S. mail service, postage prepaid, on this 22<sup>nd</sup> day of February 2012.

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**Case No(s). 09-0872-EL-FAC, 09-0873-EL-FAC**

Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.