BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals	))))	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan	))))))	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority	))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders	))))	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders	))))	Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company	))))	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	)))))	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	)))))	Case No. 11-4921-EL-RDR

AEP OHIO REPLY TO THE TARIFF OBJECTIONS FILED BY INDUSTRIAL ENERGY USERS-OHIO, ORMET PRIMARY ALUMINUM AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL/APPALACHIAN PEACE AND JUSTICE NETWORK

INTRODUCTION

On February 23, 2012, the Commission issued its Entry on Rehearing rejecting the September 7, 2011 Stipulation and Recommendation (Stipulation) that proposed to resolve ten major proceedings involving Ohio Power Company (dba AEP Ohio), including this proceeding. Through a September 16, 2011 Entry issued by the Attorney Examiner, the Commission had consolidated the ten cases for purposes of considering adoption of the Stipulation. Now that the purpose of consolidation has run its course and the settlement is rejected, the remaining issues must be carried forward and resolved through litigation. The Entry on Rehearing provided the following directive, after quoting R.C. 4928.143(C)(2)(b) regarding the requirement to return to the prior SSO rate plan:

> Therefore, we direct AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan, including but not limited to the base generation rates as approved in ESP I, along with the current uncapped fuel costs and the environmental investment carry cost rider set at the 2011 level, as well as modifications to those rates for credits for amounts fully refunded to customers, such as the significantly excessive earnings test (SEET) credit, and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.

(Entry on Rehearing at 12, emphasis added) The underlined directive involves reinstating the prior rate plan and fully implements the statutory provision quoted just prior to issuing the directive. As directed, AEP Ohio filed a set of proposed tariffs on February 28, 2012 to implement the provisions of the prior SSO rate plan, *ESP I* (Case Nos. 08-917-EL-SSO et al.)

While the February 28 tariffs can be referred to as a compliance filing, it is better described as a filing of proposed tariffs to implement the Company's prior rate plan. This is a statutory process outlined by the General Assembly in R.C. 4928.143(C)(2)(b), as contrasted with a tariff compliance filing which is normally associated with ministerial implementation of a

Commission rate order. Prior to issuance of the February 23 Entry on Rehearing, there was no effort or adjudication as to what it means to reinstitute and implement the prior rate plan after two months of implementing a new rate plan. The Commission recognized this was a new undertaking and provided general and flexible language in Finding 20, by categorically directing (as opposed to specifically with particularized delineation) AEP Ohio to file "*new proposed tariffs* to continue the provisions, terms and conditions of its previous electric security plan, *including but not limited to* …" (Emphasis added.)

Thus, the Commission understood that this was not a normal tariff compliance filing and left it to AEP Ohio to filed "new proposed tariffs" that fulfill the mandatory statutory directive – and AEP Ohio did so through the February 28 proposed tariffs. Industrial Energy Users- Ohio (IEU), Ormet Primary Aluminum Corp. (Ormet) and the Office of the Ohio Consumers' Counsel/ Appalachian Peace and Justice Network (collectively, OCC/APJN) filed objections to AEP Ohio's proposed tariffs to implement the prior rate plan. The objections are without merit and should be overruled or disregarded. OCC and APJN also ask the Commission to interrupt the long-promised recovery of AEP Ohio's deferred fuel expenses based on a misguided request that amounts to retroactive ratemaking, and invitation the Commission already properly rejected in the *ESP I* remand proceeding.

ARGUMENT

I. AEP Ohio's blended Fuel Adjustment Clause (FAC) and Transmission Cost Recovery Rider (TCRR) appropriately implement *ESP I* rates.

IEU incorrectly argues that AEP Ohio's actions in relation to the fuel adjustment clause (FAC) and the transmission cost recovery rider (TCRR) do not comply with Commission action. The Commission's directive in the February 23, 2012 Entry on Rehearing was to file "new

proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan, including but not limited to…." The Commission direction did not limit the updates to the FAC and TCRR rates as proposed by the Company due to the valid merger of the Companies. The Company was directed to file "new proposed tariffs" based on the previous system but not barred from recognizing other subsequent Commission action.

The Commission has already merged the FAC in another docket. Specifically, the FAC was approved on a merged basis in Case No. 11-5906-EL-FAC. The Commission approved the proposed fuel rates for the first quarter of 2012, on December 1, 2011. The Commission approved this filing with rates effective January 1, 2012. Nothing in the Commission's Entry on Rehearing instructed AEP Ohio to undo subsequent Commission orders in other dockets.

Any undoing of the Commission's subsequent orders in Case No. 11-5906-EL-FAC and other areas of the merged business would also be impractical. The FAC rates, for example, were based on a merged Company forecast. The Company has merged the systems that produce individual fuel costs due to the approval of the merger. The Company no longer has the fuel costs separated by the unmerged operating companies, and doing so would disallow the ability for fuel costs and true-ups to be done on an unmerged basis.

The logic applies to the TCRR implementation as well. Continuation of the provisions, terms, and conditions does not mean to ignore any other actions that have occurred in the interim. The Company filed merged TCRR rates due to the approval of the Company merger. The recognition of this fact in the rate schedules should not be ignored by the Commission. The new proposed tariffs implement the Commission's directive to implement the previous plan with the logical recognition of the merged companies.

II. AEP Ohio properly included the Phase-In Recovery Rider (PIRR) in its proposed tariffs.

IEU attacks the proposed PIRR tariff (at 3-5) by claiming: (1) that there is no prior authorization for the PIRR, (ii) that the weighted average cost of capital (WACC) carrying charge violates prior Commission precedent, and (iii) that the deferred fuel regulatory asset should be reduced by the accumulated deferred income taxes (ADIT). Ormet's pleading (at 2-4) and OCC/APJN's pleading (at 6-9) echo the same points. These arguments are without merit, as they amount to an untimely and improper attack on the *ESP I* decision which fully adjudicated these issues and is a final, non-appealable order that cannot presently be lawfully challenged or modified.

A. The proposed PIRR tariffs properly implement the prior rate plan as reflected in the *ESP I* decision

First, contrary to the objecting parties' suggestion that AEP Ohio must have an existing order that previously approved each of the proposed tariffs, implementation of R.C. 4928.143(C)(2)(b) does not work that way, as referenced above. As a factual matter, the objecting parties are wrong in stating that authorization for the amortization and recovery of the PIRR has not occurred as the December 14, 2011 Opinion and Order in this case authorized commencement of the PIRR through adoption of the Stipulation in this regard. The salient question now is whether the PIRR should continue. The correct answer as a matter of law is that it should continue in the manner that was authorized in the *ESP I* decision. The language used in February 23 Entry on Rehearing recognized that implementing the prior rate plan is not a matter of just going back to the tariffs in effect at the end of the *ESP I* term in December 2011. Clearly, there are multiple aspects of the 2009-2011 rate plan that extend into 2012 and beyond, most notably the PIRR; just because the PIRR had not been implemented at the end of 2011 does not

mean that it is any less of a major component of *ESP I*. Indeed, Finding 20 of the Entry on Rehearing directed AEP Ohio to file "*new proposed tariffs* to continue the provisions, terms and conditions of its previous electric security plan, *including but not limited to* …" (Emphasis added.) Moreover, R.C. 4928.143(C)(2)(b) does not require a prior authorization; rather, it mandates a new Commission order to implement the prior rate plan. The issue is whether AEP Ohio's proposed tariffs, including the PIRR, appropriately implement the prior rate plan – not whether a prior order exists (besides the December 14 Opinion and Order) which authorizes the PIRR tariffs filed by AEP Ohio on February 28. The PIRR is a critical component of the *ESP I* rate plan and must be implemented as approved.

The proposed PIRR tariffs are appropriate because the *ESP I* decision clearly provided for recovery of the deferred fuel regulatory asset through a nonbypassable charge beginning in January 2012:

> Therefore, we find that the *collection of the deferrals* with carrying costs created by the phase-in that are remaining at the end of the ESP term shall occur from 2012 to 2018 as necessary to *recover* the actual fuel expenses incurred plus carrying costs.

(*ESP I*, Opinion and Order at 23.) Further, as stated in the December 14, 2011 Opinion and Order in this proceeding:

> [T]he phase-in is not part of this proceeding but was the order of the Commission in the Companies' previous ESP case.

(*ESP II*, Opinion and Order at 57.) The PIRR recovery period of 2012-2018 was authorized in the ESP I decision and IEU and Ormet are wrong in claiming otherwise.[1] Consequently, the

[1] Since the *ESP I* decision did not contemplate AEP Ohio collecting the PIRR as a combined charge over the Ohio Power and Columbus Southern Power service territories, AEP Ohio proposed that the balances be recovered separately by rate zones. Thus, the collection of the PIRR is in compliance with the *ESP I* decision for continued collection.

Commission should adopt the proposed PIRR tariffs because they properly implement the *ESP I* decision to commence amortization and recovery of the deferred fuel regulatory asset in January 2012.

B. The proposed PIRR tariffs prospectively apply a WACC carrying charge, consistent with the *ESP I* decision

Second, the objecting parties argue that even if the PIRR was authorized to be recovered, the Company lacked the authority to continue to collect carrying charges based on AEP Ohio's WACC. The Commission clarified its directive regarding carrying charges in the *ESP I* decision:

> Based on the record in this proceeding, we do not find the intervenors' arguments concerning the calculation of the carrying charges persuasive. Instead, for purposes of a phase-in approach in which the Companies are expected to carry the fuel expenses incurred for electric service already provided to the customers, we find that the Companies have met their burden of demonstrating that the carrying cost rate calculated based on the WACC is reasonable as proposed by the Companies.

(*ESP I*, Opinion and Order at 23 note omitted.) Further, as stated in the December 14, 2011 Opinion and Order in this proceeding:

> The Companies offer that the carrying charge rate on deferred fuel expense was argued extensively by the parties to the ESP 1 case, and the Commission ultimately decided that the WACC, as proposed by the Companies, was reasonable. … The Commission agrees with the Signatory Parties that the carrying charge on the deferred fuel expenses was established in the ESP 1 proceeding.

(*ESP II*, Opinion and Order at 58.) In sum, the carrying charge issues were fully litigated in the *ESP I* case and the Commission adjudicated that the WACC was reasonable. Consequently, the

proposed PIRR tariff's prospective use[2] of the WACC appropriately implements the prior rate plan as reflected in the *ESP I* decision.

C. The proposed PIRR tariffs recover the deferred fuel expense on a gross-of-tax basis, consistent with the *ESP I* decision

Third, the objecting parties continue to argue that the balance reflected in the PIRR workpapers fails to adjust to reflect ADIT. Again, the Commission reiterated in both the *ESP I* decision and the December 14, 2011 Opinion and Order in this proceeding that the PIRR should be recovered on a gross-of-tax basis.

> Therefore, we find that the carrying charges on the FAC deferrals should be calculated on a gross-of-tax rather than a net-of-tax basis in order to ensure that the Companies recover their actual fuel expenses.

(*ESP I*, Opinion and Order at 24.) Further, as stated in the December 14, 2011 Opinion and Order in this proceeding:

> In the ESP 1 order, the Commission rejected request[s] to calculate the deferrals net of taxes. We again reject the request in this case. As we concluded in ESP 1, if carrying charges on the FAC deferrals are calculated on a gross of tax rather than a net of tax basis, it violates the clear directive to the Commission. Section 4928.144, Revised Code, states that if a phase-in is ordered, the order shall provide for the creation of regulatory assets pursuant to generally accepted accounting principles by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount.

(*ESP II*, Opinion and Order at 58.) As with the other aspects of the proposed PIRR tariff, the ADIT issue was already adjudicated and it cannot be challenged at this point. AEP Ohio's proposed PIRR tariffs properly implement the prior rate plan as reflected in the *ESP I* decision.

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[2] The Company notes that it did adjust the deferral balance to reflect the carrying charge to only be the 5.34% for January and February 2012 operating under the approved Stipulation for that timeframe.

III. The implementation of capacity charges is pending before the Commission and does not relate to implementation of the prior retail rate plan under R.C. 4928.143(C)(2)(b).

IEU next misstates the status of the proceeding by arguing that the Company failed to file an appropriate application of its capacity charges. As a threshold matter, R.C. 149.43(C)(2)(b) only applies to retail SSO rates and has nothing to do with wholesale capacity charges. Consequently, the statutory provision quoted above this directive has no relation to the latter part of the directive regarding the Capacity Charge Case. As has been firmly established by the Supreme Court, the Commission is not authorized to establish rates under the ESP statute unless such rates are justified through one of the categories explicitly listed in R.C. 4928.143(B)(2).[3] Thus, the ESP statute as a whole does not relate to the Capacity Charge Case and cannot support any directive in connection with the Capacity Charge Case. And the directive to file tariffs in order to temporarily reinstate the prior rate plan is fully implemented through the entire first part of the sentence (underlined above). In short, neither the statutory language quoted in Finding 20 nor the entire first part of the sentence provides any guidance on what the last part of the sentence means.

The thrust of IEU's argument is that AEP Ohio "has chosen to ignore this directive." IEU Memo at 5. This statement is incorrect. AEP Ohio was forthright and clear in its February 28, 2012 filing in the 10-2929 docket, of its concern with the Commission directive and sought clarification and understanding of what was requested. There is no reason for the Company to reiterate all the points previously raised in that Motion for Relief. AEP Ohio filed a good faith

[3] The Commission itself recently acknowledged that "The Court determined that Section 4928.143(B)(2), Revised Code, does not authorize the Commission to allow recovery of items not enumerated in the section." *ESP I*, October 3, 2011 Remand Order at 3 citing *In re Application of Columbus S. Power Co.,* 128 Ohio St.3d 512, 520.

motion relating directly to this issue that involves both federal and state issues. IEU's limited reading of the Commission Entry on Rehearing does not take into account the other factors raised by AEP Ohio and should not be relied upon without the benefit of the resolution of the Motion for Relief in the 10-2929 docket.

IV. The proposed terms and conditions, as amended through the Company's March 6 filing, are consistent and appropriate.

IEU incorrectly claims (at 6-7) that it "identified numerous other inconsistencies with the terms and conditions of service." The example IEU uses on page 7 of its filing concerning the bill demand forgiveness for GS-2 and GS-3 rate schedules is an issue the Company is aware of and has already addressed based on the Staff's request (through the supplemental tariff filing dated March 6, 2012). The issues raised in IEU's footnote 13 relate to tariff changes made in the Distribution Case and are not affected by the proposed tariffs to implement the prior SSO rate plan. Any additional issues discovered with the tariffs filed will be addressed by AEP Ohio as directed by the Commission.

V. The Commission should reject OCC's requests to either stay the prior rate plan or make the rates subject to refund, consistent with its decision in the *ESP I* remand proceeding currently being defended by the Commission before the Supreme Court of Ohio.

The OCC/APJN's request for a stay or in the alternative making the rate subject to refund is an attempt to circumvent the decision already made by the Commission in the 08-917 and 08-918-EL-SSO docket (Remand Docket).[4] In the Remand Docket, these same parties argued for a rate adjustment the Commission already determined "would be tantamount to unlawful ratemaking." OCC/APJN Memo at 4-5 citing the Remand Order at 18-24. The Commission

[4] IEU also seeks an order making any rates subject to reconciliation in footnote 15 on page 8 of its filing. The arguments opposing OCC/APJN apply equally to IEU's request.

need not reweigh the same arguments in this docket that it already determined in that docket. As shown in the November 10, 2011 Memorandum Contra filed by AEP Ohio, there are multiple grounds to deny the OCC/APJN request again. AEP Ohio attaches and incorporates by reference the arguments provided the Commission in that filing. See Attachment A. The arguments presented to not satisfy the criteria for a stay and do not justify a setting of rates subject to reconciliation.

In response to the same arguments made in the *ESP I* remand proceeding, the Commission found as follows:

> The Commission finds that the proposed adjustment to the FAC deferral balance, as recommended by OCC, OPAE, and IEU-Ohio, would be tantamount to unlawful retroactive ratemaking. In the ESP Order, we authorized AEP-Ohio to defer any FAC amount over the allowable total bill increase percentage levels pursuant to Section 4928,144, Revised Code, and directed that any deferred FAC expense balance remaining at the end of 2011 is to be recovered via an unavoidable surcharge from 2012 to 2018. The Commission agrees with AEP-Ohio that an adjustment to the FAC deferral balance, which we previously authorized to be collected as a means to recover the Companies' actual fuel expenses incurred plus carrying costs, would be contrary to the Court's prohibition against retroactive ratemaking and refunds, Although OCC, OPAE, and IEU-Ohio characterize their proposed adjustment as a prospective offset to amounts deferred for future collection, they essentially ask the Commission to provide customers with a refund to account for the Companies' past POLR and environmental carrying charges, which were collected from April 2009 through May 2011. Consistent with the Court's precedent, we cannot order a prospective adjustment to account for past rates that have already been collected from customers and subsequently found to be unjustified.

ESP I, Remand Order (October 3, 2011) at 35-36 (internal notes omitted).

On rehearing, the Commission again affirmed this result:

> The Commission affirms its decision to decline to order an adjustment to the FAC deferral balance as any such adjustment would constitute unlawful retroactive ratemaking. As we thoroughly discussed in the Remand Order, lEU-Ohio and OCC/OPAE seek what would essentially amount to a refund or credit of the Companies' unjustified charges, which is not a permissible remedy pursuant to Court precedent. We find that many of the arguments raised by lEU-Ohio and OCC/OPAE with regard to the flow-through effects of the Court's remand were

already raised by the parties and have been fully addressed (Remand Order at 34-36).

ESP I, Entry on Rehearing (December 14, 2011) at 17-18. The Commission should not reverse course on this point in a separate proceeding, especially given that it is defending the Remand Order on appeal before the Supreme Court of Ohio. *See* Sup. Ct. Case No. 2012-187.

A. OCC/APJN Have not met the standard for a stay:

1. There is not a strong likelihood that Movants will prevail on the merits.

OCC/APJN confuses the right of an appeal of another case (Remand Docket) with the presence of a strong likelihood that they will prevail on the merits in this case before the Commission. OCC/APJN are asking the Commission to issue a stay on issues the Commission previously determined were without merit in the Remand Docket. For the Commission to determine that there is a strong likelihood for OCC/APJN to prevail on the merits it would require the Commission to determine that in the present case it is likely to contradict its findings in the Remand Docket and order a completely different outcome in the present case on the same issues. Such a presumption does not meet the strong likelihood of prevailing standard. In fact it meets more of a strong unlikely chance of success. As indicated above, there are numerous arguments supporting the Commission's decision in the Remand Order and in the attached document, Attachment A. The Commission can rely upon those arguments and its subsequent findings in its Order again to determine the improper request that OCC/APJN seek in this filing.

2. There is no showing of irreparable harm or that it would further the public interest, or that a stay will not cause substantial harm to AEP Ohio.

If OCC/APJN's theory is accepted, the same concept would apply in any Commission case involving utility rates. More important than its breadth, OCC/APJN's implied blanket

presumption of irreparable harm, furthering the public interest, and lack of substantial harm to AEP Ohio flies in the face of the *Keco* decision [*Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957)] and its progeny. As referenced above, *Keco* holds that Commission rate orders are effective pending rehearing and appeal and there is no automatic stay of approved rates pending appeal – regardless of whether those rates are ultimately held to be unlawful. *Keco*, 166 Ohio St. at 258-259. If every Commission order that increased a rate were considered as the basis for irreparable harm and every rate order were stayed pending rehearing and appeal, there would be no need for the *Keco* doctrine and there would be a stay issued in every such case. That is an absurd result and belies the reality that issuance of a stay order is a highly unusual and extraordinary remedy. *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (DC Cir. 1985). Neither the Commission nor the Court has found it necessary or appropriate to issue stay orders on anything more than an extraordinary basis (as referenced above, any request for a stay before the Supreme Court of Ohio would involve additional requirements under Section 4903.16, Ohio Rev. Code, such as a financial undertaking, which are essentially bypassed where the Commission entertains a stay).

Ohio law simply does not consider the outcome that OCC/APJN describes as being harm at all, let alone irreparable harm. As the Supreme Court of Ohio has held under similar circumstances, "there is no statute which requires that, during the pendency of an appeal from the order of the commission granting an increased rate, the utility must impound the increase collected or post bond to insure reimbursement to its consumers in the event the rate should ultimately be lowered." *City of Columbus* (1959), 170 Ohio St. 105, 110, 163 N.E.2d 167, 171. The same logic would apply during the pendency of actins still before the Commission. It is a function of the integrated regulatory scheme in Title 49 of the Revised Code that Commission-

approved rates are effective during rehearing and appeal and that statutory design does not constitute irreparable harm. Consequently, granting the relief requested by OCC/APJN would cause irreparable harm to AEP Ohio and would not serve the public interest in departing from the General Assembly's statutory design for rate case procedures.

In support of its claim, OCC/APJN cite the same statutory support for irreparable harm it has cited before that do not deal with the regulated statutory environment of the Commission (see OCC/APJN Memo at 14-15 citing *Tilberry and Sinnott*). However, unaddressed is the fact that the Commission and the Court operate under the set of laws governing public utility regulation not the areas cited in the case law relied upon by OCC/APJN. The Court decisions above highlighting the uniqueness of public utility law and the importance of *Keco* shows that OCC/APJN's irreparable harm argument is without merit. Circumventing the legislative structure of public utility regulation promulgated by the General Assembly cannot be argued to serve the public interest. Likewise, withholding the rates protected by statute as statutorily valid would cause irreparable harm to AEP Ohio. OCC/APJN fail to satisfy the showing for a stay before the Commission.

B. OCC/APJN's alternative approach for rates subject to refund is also without merit.

There is no justification for OCC/APJN's and IEU's request to require the rates be subject to refund or reconciliation in this proceeding. As mentioned above the Commission has already issued its decision on the underlying issues in the case in the Remand Docket and it is the opposing parties' unwillingness to accept the Commission's decision in that case that cause them to file the request in this case. Likewise, there is no showing of any prejudice to any entity other than AEP Ohio and no likelihood of success on the merits that would create pause to even consider the argument.

The opposing parties' citation to the commission's order in CSP's 1981 Zimmer construction-work-in-progress (CWIP) rate case, Case No. 81-1058-EL-AEI, is inapposite. In that case, the Commission ordered a rate reduction, after rehearing. CSP obtained a stay of the rate reduction pending completion of its appeal of the rehearing order to the Supreme Court of Ohio. CSP even filed an undertaking in order to obtain that stay in accordance with the requirements of R.C. 4902.16. Accordingly, the procedural posture of that stay request, before the rates became final approved rates after rehearing, before the Court had heard the resulting appeal, and after having filed an undertaking, is completely different than the circumstances of opposing parties' alternative request in this case. In that case the statutory structure was allowed to work. In this case the OCC/APJN and IEU request is seeking action outside of the authorizing statutes and should be denied.

CONCLUSION

For the foregoing reasons, AEP Ohio requests that the Commission overrule or disregard the tariff objections filed by IEU, Ormet and OCC/APJN.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Power Company's Reply Memorandum was served by electronic mail upon the individuals listed below this 6th day of March, 2012.

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EXHIBIT A

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING FILED BY THE OFFICE OF THE CONSUMERS' COUNSEL AND OHIO PARTNERS FOR AFFORDABLE ENERGY AND BY INDUSTRIAL ENERGY USERS - OHIO

I. INTRODUCTION.

On November 2, 2011, Intervenors Industrial Energy Users-Ohio ("IEU") and The Office of the Consumers' Counsel and Ohio Partners for Affordable Energy ("OCC/OPAE") (collectively "Intervenors") timely filed applications for rehearing of the Commission's October 3, 2011 Order on Remand ("Remand Order"), addressing the issues remanded to the Commission by the Ohio Supreme Court in *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788 (the "Decision"). The Intervenors' primary grounds for rehearing is their assertion that the Remand Order is unlawful or unreasonable in that the Commission failed to reduce the phase-in deferrals approved in AEP Ohio's 2009-2011 ESP Plan by an amount equal to the POLR charges collected during the period April 2009 through May 2011. (IEU AFR at p. 2, ¶¶ 5-7, pp.

15-25; OCC/OPAE at p. 2, ¶¶ 1-4.) OCC/OPAE also assert that the Commission erred in failing to return to customers interest charges on the POLR revenues collected by AEP Ohio from April 2009 through May 2011. (OCC/OPAE AFR at p. 3, ¶ 5, p. 15.) IEU separately asserts that the Commission erred in not addressing the flow-through effects of the Ohio Supreme Court's reversal and remand of the Commission's March 18, 2009 ESP Order on AEP Ohio's recovery of delta revenue, on revenue generated by the Universal Service Fund, or in the operation of the significantly excessive earnings test. (IEU AFR at p. 2, ¶8, pp. 118-19.) IEU also asserts that the Remand Order is unlawful and unreasonable in allowing AEP Ohio to continue to recover a carrying charge on 2001-2008 environmental investments ("Base Environmental charge") in the base generation rates charged to retail customers. (IEU AFR, at p. 1-2, ¶¶ 1-3, pp. 5-12.) As it did with respect to the POLR revenue, IEU argues for a reduction in deferrals equal to the Base Environmental charge recovered during the period April 2009 through October 3, 2011. (IEU AFR at p. 2, ¶ 4, pp. 13.15.)

Intervenors' applications for rehearing merely re-assert arguments they previously made in the post-hearing briefs or even earlier in these proceedings. See e.g., IEU Initial Post-Hearing Brief at 43-49; Reply Brief at 16-19 (discussing flow-through issues); IEU Post-Hearing Brief at 13; Reply Brief at 3 (discussing the Base Environmental charge issue); OCC/OPAE Initial Post Hearing Brief at 44-47; Reply Brief at 22. Their applications for rehearing may be denied for this reason alone. Intervenors' applications for rehearing, however, also are properly denied for lack of merit because they are premised on: 1) the erroneous assumption that the collection of POLR revenue and recovery of the Base Environmental charge as authorized in the March 18, 2009 ESP

Order was rendered unlawful by the Ohio Supreme Court's Decision; 2) the equally erroneous belief that the Commission can order a refund of revenues lawfully collected consistent with the Companies' approved tariffs; and 3) the assertion that the Commission erred in finding express statutory support for the approval of the Base Environmental charge.

II. ARGUMENT.

A. The Commission properly rejected Intervenors' flow-through arguments because revenue collected under the Commission-approved tariffs is lawfully collected, notwithstanding the fact that the Ohio Supreme Court subsequently reverses and remands the Commission's order approving the tariffs.

In their applications for rehearing, Intervenors argue, as they did throughout the remand proceedings, that the collection of POLR revenues and recovery of the Base Environmental charge by AEP Ohio during the period April 2009 through May 2011 or October 3, 2011 was "unjustified" or "unlawful." That assertion is simply unfounded and was properly rejected by the Commission in the Remand Order.

The Court did not find that AEP Ohio's POLR and Base Environmental charges were unlawful. To the contrary, the Court explicitly withheld judgment on the lawfulness of the POLR charge, stating:

> To be clear, we express no opinion on whether a formula-based POLR charge is per se unreasonable or unlawful, and the commission may consider on remand whether a non-cost-based POLR charge is reasonable and lawful. Alternatively, the commission may consider whether it is appropriate to allow AEP to present evidence of its actual POLR costs.

Remand Decision at ¶ 30. The Court also withheld judgment on the legality of AEP Ohio's recovery of the Base Environmental charge, remanding that issue and authorizing the Commission to "determine whether any of the listed categories of [R.C. 4928.143](B)(2) authorize recovery of [such] charges." *Id.* at ¶ 35. If the Court had truly

determined that AEP Ohio's recovery of these charges was "unlawful," those issues would not be before this Commission on remand.

More to the point of Intervenors' rehearing bid, the same Supreme Court Remand Decision purportedly relied upon to advance their unjust enrichment theory actually serves to firmly prohibit that result. In particular, the Court held that the Commission violated Ohio law by approving rates that "recouped losses." Remand Decision at ¶ 10. The Remand Decision enforced the bedrock *Keco* case and progeny by emphasizing that prospective rate adjustments that make up for prior errors are prohibited. *Id.* at ¶ 11. Stated differently, the Court held that rates already collected are "water under the bridge" and the the rule against retroactive rates also prevents refunds. *Id.* at ¶ 15. To be absolutely clear, the Court emphasized that "*any refund order* would be contrary to our precedent declining to engage in retroactive ratemaking" and reiterated the *Keco* holding that Title 49 "affords no right of action for restitution" of charges collected during the pendency of an appeal. *Id.* at ¶ 16 (emphasis added). In sum, the Remand Decision directly and emphatically held that the filed rate doctrine applies and prohibits retroactive ratemaking in ESP rates established under SB 221.

As a matter of law, AEP Ohio's receipt of the POLR charges and the Base Environmental charge was lawful – the POLR charges and the Base Environmental charge were collected pursuant to Commission-approved tariffs. The collection of POLR charges and the Base Environmental charge during the period April 2009 through May 2011 were expressly authorized as "justified" charges to be included in the Companies 2009-2011 ESP, in accordance with Ohio Rev. Code § 4928.143(B), by the March 18, 2009 ESP Order and July 23, 2009 Entry on Rehearing. The Commission's May 25,

2011 Entry prospectively converted the POLR and Base Environmental charges to be collected subject to refund as of June 1, 2011 until a decision was issued in the remand proceeding. AEP Ohio's collection of POLR charges and of base generation rates that included the Base Environmental charge, per the Commission's orders, was therefore lawful and justified. Indeed AEP Ohio could not have failed to collect these charges, as AEP Ohio is required by law to bill its customers only in accordance with its approved tariffs. Ohio Rev. Code § 4905.32; Lucas Cty. Commrs. v. Pub. Util. Comm. (1997), 80 Ohio St.3d 344, 347, 686 N.E.2d 501 ("[W]hile a rate is in effect, a public utility must charge its consumers in accordance with the commission-approved rate schedule.")

Intervenors are wrong in asserting that the Supreme Court's reversal and remand of the Commission's approval of the POLR and Base Environmental charges immediately rendered recovery of such revenue unlawful for the entire 2009-2011 ESP term. Notwithstanding the Supreme Court's Decision, the charges and rates approved by the Commission in the March 18, 2009 ESP Order remained the lawful charges and rates and to be collected until this Court issued its October 3, 2011 Remand Order. The Ohio Supreme Court ruled on this precise point in Cleveland Elec. Illum. Co. v. Pub. Util. Comm. (1976), 46 Ohio St.2d 105, 346 N.E.2d 778. The Court held at Syllabus 2:

> When this court reverses and remands an order of the Public Utilities Commission establishing a revised rate schedule for a public utility, the reversal does not reinstate the rates in effect before the commission's order or replace that rate schedule as a matter of law, but is a mandate to the commission to issue a new order, and the rate schedule filed with the commission remains in effect until the commission executes this court's mandate by an appropriate order. (Gene Slagle, Inc. v. Pub. Util. Comm., 41 Ohio St.2d 44, 322 N.E.2d 640, overruled.)

Ironically, as explained above, the very same Remand Order relied upon by IEU and OCC/OPAE to support their assertion that the POLR and Base Environmental charges are

unlawful explicitly precludes the recapturing and refunding of revenues collected under those charges during the 2009-2011 period in which they were collected pursuant to a Commission-approved tariff – even if the refund occurs through a prospective rate adjustment.

B. The fuel adjustment clause ("FAC") cost deferrals were properly approved in the Commission's ESP Order and cannot now be collaterally attacked in this remand proceeding.

Perhaps recognizing the weakness of their assertion that the POLR charges collected during the period April 2009 through May 2011 were unjustified, OCC and OPAE re-tool their argument to directly attack the FAC cost deferrals. They argue that the deferrals are "overvalued" and "violate[] R.C. 4928.143." (OCC/OPAE AFR at 8, 6.) This new argument has no place in this limited remand proceeding. The FAC cost deferrals were approved in the March 18, 2009 ESP Order. OCC sought rehearing as to the FAC deferrals but argued only that were unfair and would have a destabilizing effect. (OCC April 17, 2009 AFR at 42-44.) OCC did not argue for rehearing of the FAC deferrals on the grounds that they would be overvalued by the amount of any charges subsequently found to be unjustified. OCC did not make this argument even though in that application for rehearing it attacked the justification for both the POLR charges and the recovery of the Base Environmental charge. (*Id.* at 29, 37.) Moreover, OCC did not pursue its assignment of error regarding the FAC deferrals in its appeal to the Ohio Supreme Court, as evident from the fact no such assignment of error is mentioned by the Court in its Decision. As a result, the validity of the FAC deferrals are not open to collateral attack in this proceeding under the law of the case. Hubbard ex rel Creed v.

Sauline (1996), 74 Ohio St.3d 402, 404, 659 N.E.2d 781; Office of the Consumers' Counsel v. Pub. Util. Comm. (1985), 16 Ohio St. 3d 9, 10-11, 475 N.E.2d 782.

C. The deductions in referrals Intervenors advocate constitute prohibited retroactive rate-making.

Proceeding from the false premise that AEP Ohio's Commission-approved collection of POLR and Base Environmental charges is "unlawful," OCC/OPAE argue that Commission erred by not reducing the residual ESP phase-in deferrals by the amount of revenue collected from the POLR charge during the period April 2009 through May 2011 and by not returning to customers interest charges on the POLR revenue collected during this period. (OCC/OPAE AFR at 15.) IEU echoes and expands this argument by seeking to have the ESP phase-in deferrals and other ESP-authorized revenue recovery mechanisms reduced by the amount of revenue attributable to both the POLR charges and Base Environmental charge for the period April 2009 through the effective date of the Remand Order. While OCC/OPAE seek to blunt the "impact of the unjustified POLR charges" on the phase-in deferrals collected in 2012-2018 (OCC/OPAE AFR at 16), IEU would have the Commission "strip[] away all the effects of the unlawfully authorized revenue increases." (IEU AFR at 20.) Both requests, however, were properly denied by the Commission in its Remand Order at 35 as seeking prohibited retroactive rate-making.

As AEP Ohio has explained in numerous filings in this proceeding, restitution is not an available remedy. "[T]he remedy provided by law" for a purportedly unlawful rate increase is to seek a stay and post a bond, per Ohio Rev. Code § 4903.16. Decision at ¶ 20. That is the manner in which Ohio's "statutes protect against unlawfully high rates[.]" *Id.* at ¶ 17. No Intervenor took advantage of this option, and Intervenors cannot now back-door a remedy by seeking an offsetting adjustment to other authorized

recoveries. Prospectively curing for past rates collected and subsequently determined to be unjustified or unauthorized is precisely the nature of unlawful retroactive rate-making that was rejected by the Supreme Court. Decision at ¶¶ 15-16.

OCC/OPAE argue that the Ohio Supreme Court creates an exception to the general prohibition against retroactive ratemaking "if there is a mechanism built into the rates that allow[s] for prospective rate adjustments," and further argue that the phase-in deferrals provide such a mechanism. (OCC/ OPAE AFR at 13-14.) IEU likewise agues that the phase-in deferrals are "uncollected amounts that remain subject to adjustments," such that its proposal does not result in prohibited retroactive rate-making. (IEU AFR at 24-25.) Intervenors also argue that Ohio Rev. Code § 4928.144 requires the Commission to restate the deferred revenue balance. (IEU AFR at 18; OCC/OPAE at 10-11.) These arguments mischaracterize the fuel adjustment clause ("FAC") cost deferral mechanism established in the Commission's ESP Order at 20-24.

OCC/OPAE's argument is based on misreading of Lucas Cty. Commrs. v. Pub. Util. Comm, 80 Ohio St.3d at 348. In suggesting that a built-in rate adjustment mechanism might be a way of avoiding the prohibition against rate-making, the Court was referring to a mechanism incorporated into the original rate authorization, which allowed for a refund or adjustment (increase or decrease) upon a pre-determined condition precedent. There is no mechanism built into AEP Ohio's ESP to adjust AEP Ohio's collection of deferred FAC costs. The ESP Order explained that "Section 4928.144, Revised Code, . . . mandates that any deferrals associated with the phase-in authorized by the Commission *shall be collected* through an unavoidable surcharge." ESP Order at 22 (emphasis added). Accordingly, the Commission held that "[a]ny

amount over the allowable total bill increase percentage levels will be deferred . . . with carrying costs[,]" and "any deferred FAC expense balance remaining at the end of 2011 *shall be recovered* via an unavoidable surcharge." (*Id.* at pp. 22-23 (emphasis added).) The Commission further held that "the collection of any deferrals, with carrying costs, . . . *shall occur* from 2012 to 2018[.]" (*Id.* at p. 23 (emphasis added).) Thus, the FAC mechanism did not "allow for prospective rate adjustments." To the contrary, AEP Ohio's recovery of its deferred FAC expense balance is mandatory, under both the Commission's ESP Order and Ohio Rev. Code § 4928.144. The only period of time during which the POLR and Base Environmental charges were collected subject to refund was between the first billing cycle of June 2011 through the last billing cycle of October 2011 – per the May 25, 2011 Entry. Thus, the Commission can reach back only to June 1, 2011 in recapturing revenue collected under the POLR and Base Environmental charges.

IEU again asserts, as it did in its initial brief at 48, that "[t]he Commission itself recognized . . . that the deferrals booked by the Companies were not sacrosanct," pointing to provisions in the Commission's ESP Order that required AEP Ohio to "phase-in any authorized increases so as not to exceed" the rate increase caps and defer "[a]ny amount over the *allowable total bill increase* percentage levels[.]" (IEU AFR at 21, quoting ESP Order at 22 (emphasis in IEU AFR).) That is revisionist history. There is no question that the phased-in rate increases that occurred before the Supreme Court's remand decision were "authorized" by the Commission. There is also no question as to what the "allowable total bill increase percentage levels" were. Authorized increases were capped at 7% for CSP and 8% for OP in 2009, 6% for CSP and 7% for OP in 2010, and 6% for

CSP and 8% for OP in 2011. ESP Order at 22. When the Commission held that "[a]ny amount over the allowable total bill increase percentage levels will be deferred" (*id.*), it meant that any amount *over the yearly rate increase caps* would be deferred. Nothing in the Commission's Opinion and Order allowed, must less required, a redetermination of AEP Ohio's deferred FAC expenses after they had already been deferred. The Commission's ESP Order stated that any deferred FAC expense balance "*shall be recovered.*" *Id.* (emphasis added). Thus, IEU's inaccurately analogizes this situation to the Commission's decision not to include in rate base the booked amount of AFUDC related to the period of interrupted construction of the Zimmer plant. (IEU AFR at 21.) The obvious and overriding distinction is that those costs were not previously authorized or approved by the Commission in a prior rate-making order.

Section 4928.144 of the Ohio Revised Code similarly states that any "incurred costs" that are deferred to allow the phase-in of an electric distribution utility rate "shall" be collected "through a nonbypassable surcharge on any such rate or price so established[.]" Ohio Rev. Code § 4928.144. Thus, recalculating the deferred FAC expenses would violate Section 4928.144. OCC/OPAE's contrary argument that the failure to reduce the deferrals by the amount of the POLR collections violates Section 4928.144 is based on a clear misdirection. OCC/OPAE argue that "[b]ecause the deferrals to be phased in were the result of a residual rate calculation of ESP rates, which included POLR charges that were unrelated to POLR costs incurred, the deferral created under the phase-in cannot be said to relate entirely to 'incurred costs.'" (OCC/OPAE AFR at 11.) The ESP Order did not defer any POLR costs; it deferred and phased-in FAC costs actually incurred. The only challenge related to FAC costs before the Ohio

Supreme Court on appeal was IEU's assignment of error based on how the fuel-cost baseline was established – an argument the Court rejected. Decision at 20-21. Thus, the propriety or amount of the FAC cost deferral is not open to debate in this remand proceeding. The deferred costs must be collected under § 4928.144, notwithstanding the finding that no actual POLR costs were incurred.

D. Intervenors' flow through proposal undermines state policy.

OCC/OPAE's state policy argument is also misdirected. (OCC/OPAE AFR at 11-12.) The reason the Commission deferred recovery of the FAC increases was its belief that a phase-in of the increases was "necessary to ensure rate or price stability and to mitigate the impact on customers during [a] difficult economic period." ESP Order at 22. The Commission's action fully supports the state policy favoring "rate or price stability for consumers," as expressed in Ohio Rev. Code § 4928.144. Intervenors' argument, if accepted, would seriously undermine the ability of public utilities in Ohio to implement expense deferral accounting mechanisms in the future. It would call into question whether Commission expense deferral orders could be relied upon and, as a result, would call into question whether the deferrals themselves were legitimate in the first place. Such a result would conflict with §§ 4928.144, 4928.143(d) and 4928.143(f), undermine the state policy favoring "rate stability" for consumers, and undermine the state policy supporting "future revenue certainty for the Companies." ESP Order at 72.

E. The Commission did not err in finding that the Base Environmental charge is properly authorized by Ohio Rev. Code § 4928.143(B)(2)(d).

IEU has not presented any new or accurate arguments to call into question the Commission's determination that the Base Environmental charge is properly included in

the Companies current ESP. The Commission has fully addressed and properly rejected the argument that the Base Environmental charge cannot be authorized under Section 4928.143(B)(2)(d) because the carrying costs do not have the effect "of stabilizing or providing certainty regarding retail electric service." Remand Order at 14.

IEU premises its request for rehearing on an unnatural reading the of the statute. IEU argues that subsection (B)(2)(d) authorizes the approval of only those terms, conditions and charges that "are necessary to make retail electric service probable" or "are necessary to provide certainty in the provision of retail electric service." (IEU AFR at 6-8.) That is not the statutory standard. The statute authorizes such terms, conditions and charges as "would have the effect of stabilizing or providing certainty regarding retail electric service." A term, condition or charge may well have the effect of stabilizing or providing certainty regarding service without being necessary to make the service certain or probable. For example, fairly compensating investors for making environmentally-necessary improvements to generation facilities has the effect of assuring the certainty of a firm supply of retail electric generation service, even though retail electric service may continue to be available for some period of time even without such improvements or fair compensation for such improvements.

IEU also is plainly wrong in suggesting that there is no record support for the Commission's conclusion that the Base Environmental charge has the effect of providing certainty to both the Companies and their customers. The testimony established that the environmental investments related to these carrying costs "are necessary to keep the Companies' low-cost coal-fired generating units running," that the "operating costs of these units remain well below the cost of securing the power on the market," and that the

"Companies are passing the lower-cost power through the FAC. (Cos. Ex. 7B at 6.) Thus, contrary to IEU argument (AFR at 7) there was nothing speculative about the beneficial effect of the Base Environmental charge on retail electric service. Moreover, the manner by which PJM dispatches resources does not negate the established practice that the Companies pass the benefits of lower-cost power to customers through the FAC.

The Commission also fully addressed IEU's argument that there is no "economic basis" for authorizing the recovery of the Base Environmental charge. In doing so, it appropriately noted that there is no such requirement for carrying costs authorized under § 4928.143(B)(2)(d). Remand Order at 13. IEU's reliance on the Commission's previous determination that the Companies' enhanced service reliability plan ("ESR") rider should be based on the Companies' prudently incurred costs to challenge the continuation of the Base Environmental charge is entirely misplaced. (IEU AFR at 9, citing ESP Order at 34.) The Companies proposed, and the Commission approved, the ESR rider under Section 4928.143(B)(2)(h), which authorizes certain types of provisions related to distribution service to be included in an ESP. The Companies proposed the ESR rider as a distribution infrastructure modernization plan, which is intended to "provid[e] for the utility's recovery of costs." The distinction is important given the Commission's analysis in the ESP Order at 33:

> The Commission recognizes that Section 4928.143(B)(2)(h), Revised Code, authorizes the Companies to include in its ESP provisions regarding single-issue ratemaking for distribution infrastructure and modernization incentives. . . . In deciding whether to approve an ESP that contains provisions for distribution infrastructure and modernization incentives, Section 4928.143(B)(2)(h), Revised Code, specifically requires the Commission to examine the reliability of the electric utility's distribution system and ensure that customers' and the electric utilities' expectations are aligned, and to ensure that the electric utility is emphasizing and dedicating sufficient resources to the reliability of its distribution system.

> Given AEP-Ohio's proposed ESRP, the only way to examine the full distribution system, the reliability of such system, and customers' expectations, as well as whether the programs proposed by AEP-Ohio are "enhanced" initiatives (truly incremental), is through a distribution rate case where all components of distribution rates are subject to review. Therefore, at this time, the Commission denies the Companies' request to implement, as well as recover costs associated therewith, the enhanced underground cable initiative, the distribution automation initiative, and the enhanced overhead inspection and mitigation initiative.

Thus, the Commission determination that there should be some cost basis for approval of the recovery of distribution-related infrastructure improvements under subsection (B)(2)(h) does nothing to call into question the propriety or wisdom of the Commission's determination that subsection (B)(2)(d) does not contain a similar requirement. Nothing about IEU's application for rehearing changes the factual finding in the 2009 ESP Order (at 28) that the carrying costs for the 2001-2008 environmental investment "will be incurred after January 1, 2009, on past environmental investments (2001-2008) that are not presently reflected in the Companies' existing rates."

Finally, IEU quarrels with the Commission's notation in the Remand Order at 15 that its Base Environmental charge decision is consistent with the broad authority granted by Ohio Rev. Code § 4928.143(B)(1), arguing that the Commission came to this conclusion without benefit of briefing and that the conclusion violates the law of the case doctrine. (IEU AFR at 10-12.) Its criticism is unfounded.

First, IEU cites no authority for the proposition that the Commission must confine its analysis of an issue to only those arguments specifically advanced by the parties. The proposition, in fact, flies in the face of the abundant authority recognizing the Commission's unique role and expertise in administering the complex scheme of public utility rate regulation.

Second, IEU misstates the law of the case doctrine. The law of the case doctrine "precludes a litigant from attempting to rely on arguments at a retrial which were fully pursued, or available to be pursued, in a first appeal." Hubbard ex rel Creed v. Sauline, 74 Ohio St.3d at 404. The law of the case doctrine does not limit the Commission's authority to fully analyze the issues actually remanded to it. Here the Supreme Court remanded the Base Environmental charge to the Commission after reversing the Commission's prior "legal determination that R.C. 4928.143(B)(2) permits ESPs to include unlisted items." Decision at ¶ 35. While the Court indicated that "[o]n remand, the commission may determine whether any of the listed categories of (B)(2) authorize recovery of environmental carrying charges," (*id.*), that statement is not necessarily, or even fairly, read to limit the Commission's authority to consider other subsections in the statute. The fact that the Court considered the Commission free to find the Base Environmental charge authorized by one or more of the listed categories in (B)(2) does not mean that the Court meant to preclude the Commission from looking for the requisite authority elsewhere in the statute. IEU's argument is inconsistent with the Court's and the Commission's ultimate goal of determining the intent of the General Assembly. Decision at ¶73.

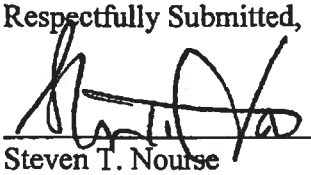
Third, and most telling of all, while IEU criticizes the Commission for noting that § 4928.143(B)(1) also authorizes the inclusion of the Base Environmental charge in the Companies' ESP, it does not, and cannot, criticize the merits of the Commission's conclusion. The environmental investment carrying charges are a legitimate component of the Companies SSO generation rates as they are directly related to generating facilities used to serve SSO customers, such that they are properly included in the base generation

rates under section (B)(1), in addition to being expressly authorized under subsection (B)(2)(d).

III. CONCLUSION.

For all the foregoing reasons, Columbus Southern Power and Ohio Power Company request that the Commission deny the November 2, 2011 Applications for Rehearing filed by IEU and OCC/OPAE.

Respectfully Submitted,



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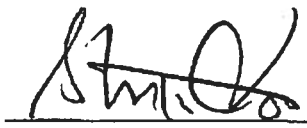
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Application for Rehearing has been served upon the below-named counsel and Attorney Examiners via electronic mail this11th day of November, 2011.



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Summary: Reply AEP Ohio to Tariff Objections electronically filed by Mr. Steven T Nourse on behalf of American Electric Power Service Corporation