

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	Case No. 11-346-EL-SSO
Columbus Southern Power Company and)	Case No. 11-348-EL-SSO
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.)	

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

In the Matter of the Application of)	Case No. 11-4920-EL-RDR
Columbus Southern Power Company 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)	Case No. 11-4921-EL-RDR
Power Company for Approval of a)	
Mechanism to Recover Deferred Fuel)	
Costs Ordered Under Ohio Revised Code)	
4928.144.)	

**MEMORANDUM CONTRA OHIO POWER COMPANY’S APPLICATION FOR
REHEARING OF THE COMMISSION’S MARCH 7, 2012 ENTRY
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL
AND
THE APPALACHIAN PEACE AND JUSTICE NETWORK**

I. INTRODUCTION

As part of advocating that residential consumers receive adequate service at just and reasonable rates, the Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential consumers, and the Appalachian Peace and Justice Network (“APJN”), a not-for-profit organization whose members include low-income customers in southeast Ohio,

file this memorandum contra the application for rehearing filed by Ohio Power Company (dba AEP Ohio) (“AEP Ohio” or “Company”) in the above-captioned proceedings (“ESP 2”) on March 14, 2012.¹ AEP Ohio seeks rehearing of a portion of the Entry issued by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) in these cases on March 7, 2012.

In the March 7 Entry, the Commission ordered AEP Ohio to remove the Phase-In Recovery Rider (“PIRR”) from the tariffs the Company filed to comply with the Commission’s ESP 2 Entry on Rehearing dated February 23, 2012.² As a result, the PUCO stopped AEP Ohio’s collection of the charges from customers.

AEP Ohio claims that the March 7 Entry is unlawful and unreasonable in five ways:

1. The Commission’s refusal to allow AEP Ohio to collect the PIRR immediately from customers is in conflict with, and violates, the Commission’s decision in ESP 1 that authorized both the deferral of the fuel costs during 2009-2011 and the ultimate collection of those deferrals from customers during 2012-2018.
2. The Commission’s failure to permit AEP Ohio to collect the PIRR immediately from customers violates R.C. 4928.144, which requires the Commission to ensure the recovery of the fuel cost deferrals authorized in ESP 1 in the manner specified by the Commission’s ESP 1 decision.
3. The Commission’s failure to permit AEP Ohio to collect the PIRR immediately from customers also violates R.C.

¹ Ohio Adm. Code 4901-1-35(B). If OCC and APJN do not respond to a specific argument made by a signatory party in its application for rehearing, that should not be construed as acquiescence by OCC and APJN to that argument.

² The March 7 Entry also removed the Transmission Cost Recovery Rider (“TCRR”) and the Fuel Adjustment Clause (“FAC”) from the tariffs; approved the tariffs effective for bills rendered on or after March 9, 2012; directed AEP Ohio to file unblended TCRR and FAC rates to be effective March 9, 2012, subject to Commission review; and directed AEP Ohio to file a tariff including a TCRR rate for IRP-D customers, consistent with the terms and conditions of the PUCO’s order in *AEP Ohio Electric Security Plans*, Case Nos. 08-917-EL-SSO, et al., Opinion and Order (March 18, 2009) (“ESP 1 Order”). March 7 Entry at 6. The Company does not seek rehearing of these aspects of the March 7 Entry.

4928.143(C)(2)(b), which requires the Commission to issue any order necessary to continue the provisions of ESP 1.

4. The Commission also erred by not providing that the PIRR shall continue to incorporate a weighted average cost of capital (“WACC”) carrying charge, consistent with the Commission’s ESP 1 decision, that customers will have to also pay.
5. The Commission also erred by not providing that the PIRR shall collect the deferred fuel expense on a gross-of-tax basis, consistent with the ESP 1 decision.³

AEP Ohio is wrong. Nothing in Ohio law or the ESP 1 Order requires the PIRR to be collected from customers immediately upon the end of the Company’s first ESP or the Commission’s rejection of the Company’s second ESP. Further, the Commission made clear that the issues surrounding the PIRR – including the calculation of carrying charges and the FAC deferral balance, after proper review (i.e., audit) as ordered in the ESP 1 decision – will be addressed in the deferred fuel costs docket.⁴ The Company’s claims are baseless, and the Commission should deny AEP Ohio’s application for rehearing.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. 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

³ See AEP Ohio Application for Rehearing at 2-3.

⁴ March 7 Entry at 5.

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, AEP Ohio has not met the statutory standard for abrogating or modifying the March 7 Entry.

III. ARGUMENT

As a general matter, AEP Ohio asserts that “[a]bsent the Company’s consent, the Commission lacks authority or discretion to either delay recovery of the cost deferrals or modify the carrying charges previously approved.”⁵ The Company cites no authority for this proposition. Indeed, there is none.

Further, if AEP Ohio’s assertion were true, there would be no reason for the deferred fuel cost cases; AEP Ohio could just file tariffs to collect the deferred costs from customers. In its application in the deferred fuel cost cases, however, the Company explicitly states that it “seek[s] approval of a mechanism to recover the fuel costs ordered to be deferred for later collection by the Commission as part of the phase-in of rate changes ordered by the Commission in the Companies’ ESP cases....”⁶ The Company thus recognizes it cannot collect the deferred fuel costs in the absence of Commission authorization.

In that regard, the Commission has a statutory obligation to ensure that only those costs of fuel that are prudently incurred to generate the electricity supplied under the

⁵ Id. at 5.

⁶ Case No. 11-4920-EL-RDR, et al., Application (September 1, 2011) at 1.

standard service offer can be considered for collection from customers.⁷ The Commission must not shirk this responsibility.

A. Nothing in Ohio Law or the Commission’s ESP 1 Decision Allows AEP Ohio to Collect Deferred Fuel Costs from Customers Immediately at the Conclusion of the Company’s First ESP.⁸

AEP Ohio claims that because the ESP 1 Order authorized collection of deferred fuel costs, the Company should be allowed to begin collecting the deferred costs immediately from customers. The Company asserts that it is “entitled to implement the PIRR tariffs, and the Commission’s role in approving the PIRR tariffs is, at most, a ministerial one.”⁹ The Company, however, is wrong.

There is nothing in Ohio law or in the ESP 1 Order that requires the deferred costs to be collected “immediately” upon the end of the ESP 1 term. In the ESP 1 Order, the Commission merely found that “collection of any 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.”¹⁰ The ESP 1 Order established no specific date for the Company to begin collecting deferred fuel costs from customers.

The date when the Company should start collecting deferred costs from customers was first established in the ESP 2 Order, which at the time approved the PIRR. There, the Commission ordered AEP Ohio to file revised final tariffs consistent with the order “and that the revised final tariffs shall be approved to be effective January 1, 2012,

⁷ R.C. 4928.143(B)(2)(a).

⁸ This section responds to the Company’s first three claims of error.

⁹ AEP Ohio Application for Rehearing at 7.

¹⁰ ESP 1 Order at 23 (emphasis added).

subject to final review by the Commission.”¹¹ But when the Commission reversed its decision on rehearing, its approval of the PIRR – and hence AEP Ohio’s authority to begin collecting deferred fuel costs from the first ESP – was rescinded.

Once the PUCO rejected the Company’s second ESP, R.C. 4928.143(C)(2)(b) came into play. The statute provides, “if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility’s most recent standard service offer, along with any *expected* increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively.” (Emphasis added.) The statute does not allude to deferred fuel costs from the previous ESP. Nor does the statute require the Commission to issue an immediate order regarding any particular aspect of the standard service offer.

The Entry on Rehearing is consistent with R.C. 4928.143(C)(2)(b). There, the Commission issued a new order requiring AEP Ohio to “file proposed tariffs consistent with this order by February 28, 2012.”¹² In these tariffs, the Commission ordered the Company

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

¹¹ ESP 2, Opinion and Order (December 14, 2011) at 67.

¹² ESP 2, Entry on Rehearing (February 23, 2012) at 13.

state compensation mechanism established in the Capacity Charge Case.¹³

This accomplished part of the requirement of R.C. 4928.143(C)(2)(b).

The Commission may address the remainder of the statutory requirement – *expected* increases or decreases in fuel costs from those contained in that offer – in other cases. For example, in AEP Ohio’s latest FAC case, Case No. 11-5906-EL-FAC, the Company has provided information regarding not only its actual fuel costs for the 4th quarter of 2011, but also its projected costs for the 2nd quarter of 2012.¹⁴ Thus, that case has relevance to the Company’s expected fuel costs.

The Commission was not required by law or the ESP 1 Order to allow AEP Ohio to collect the PIRR charges after rejecting the Stipulation. The Commission should deny the Company’s rehearing request on this issue.

B. Because the Commission Was Not Required to Allow AEP Ohio to Collect the PIRR Charges After Rejecting the Stipulation, the Commission Did Not Have to Address the Weighted Average Cost of Capital for Carrying Charges or Collecting the Deferred Fuel Expense on a Gross-of-Tax Basis.¹⁵

AEP Ohio claims that the Commission, in the March 7 Entry, also erred by failing to confirm that the Company is authorized to continue collecting carrying charges on the unamortized balance of deferred fuel costs based on the Company’s WACC.¹⁶ (The Company’s proposal to use WACC will, if allowed, cost customers considerably more money than if the long-term cost of debt is used.) The Company asserts that the issue

¹³ Id. at 12.

¹⁴ See *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case No. 11-5906-EL-FAC, 2nd Quarter Tariff Filing (March 1, 2012).

¹⁵ This section addresses the Company’s fourth and fifth claims of error.

¹⁶ AEP Ohio Application for Rehearing at 10-11.

was fully litigated, and invokes the ESP 1 decision and R.C. 4928.144 and 4928.143(C)(2)(b) in asking the Commission to “confirm that the WACC is the appropriate carrying cost rate to use during the 2012-2018 amortization and recovery period.”¹⁷ Similarly, the Company leans on the ESP 1 decision for the proposition that the Commission erred in not confirming in the March 7 Entry that the PIRR shall collect the deferred fuel expense from customers on a gross-of-tax basis. The Company’s assertions, however, are erroneous.

These two claims of error are based on the assumption that the Commission had to address the PIRR in the March 7 Entry. But as discussed above, nothing in Ohio law or the ESP 1 Order requires the Commission to address the PIRR at this time. AEP Ohio’s reliance on R.C. 4928.144, R.C. 4928.143(C)(2)(b) and the ESP 1 decision is misguided.

In addition, the Commission did not authorize the Company to use the WACC for calculating carrying charges on the deferred fuel costs during the amortization period, as the Company alleges. Rather, the Commission authorized use of the WACC for calculating carrying charges only during the three-year term of the Company’s first ESP, i.e., 2009-2011. Thus, it is inappropriate for AEP Ohio to use the WACC for calculating carrying charges on the deferred fuel costs beyond 2011 without further Commission authorization. Instead, the Company’s long-term cost of debt, which is a lower rate than the WACC, should be used to calculate carrying costs in the amortization period (2012 to 2018) in order to save the Company’s customers millions of dollars in carrying costs.

¹⁷ Id. at 11.

These allegations of error by AEP Ohio are based on false assumptions and misinterpretations of Ohio law and the Commission's ESP 1 Order. The Commission should deny the Company's request for rehearing on these issues.

IV. CONCLUSION

AEP Ohio's assertions that the Commission should have addressed the PIRR in the March 7 Entry have no valid basis in Ohio law or the ESP 1 decision and are contrary to the interests of the Company's customers. The Commission should deny AEP Ohio's application for rehearing.

Respectfully submitted,

BRUCE J. WESTON

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**On Behalf of the Appalachian Peace and
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served via electronic transmission, to the persons listed below, on this 26th day of March 2012.

/s/ Terry L. Etter

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Summary: Memorandum Memorandum Contra Ohio Power Company's Application for Rehearing of the Commission's March 7, 2012 Entry by the Office of the Ohio Consumers' Counsel and the Appalachian Peace and Justice Network electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.