

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Respectfully submitted,

BRUCE J. WESTON

Terry L. Etter, Counsel of Record
Maureen R. Grady
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-7964
etter@occ.state.oh.us
grady@occ.state.oh.us

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. DISCUSSION	5
A. The Commission Cannot Approve The Collection Of The Rider Because It Is Based On ESP Rates That Were Not Established In Compliance With R.C. 4928.143 And A Phase-In Plan That Is Not Just And Reasonable Under R.C. 4928.144.....	6
B. The Company Must Meet Its Burden Of Proving That The Fuel Costs Were “Prudently Incurred” Costs Of Fuel Used To Generate Electricity Supplied Under The Offer, As Required By R.C. 4928.143(B)(2)(A).....	8
C. To Avoid An Inequitable Result That Could Harm Consumers, The Commission Should Make Collection Of The Rider Subject To Refund.....	11
D. If The Commission Does Not Reduce The Rider For \$368 Million (Plus Carrying Charges) Of Unlawful Charges, Then It Should Only Allow Collection Of The Rider Subject To Refund	13
E. The Company’s Proposed Amortization Schedule Does Not Comply With The ESP 1 Order, And The Commission Should Require A Shorter Period For Collection Of The Deferred Fuel Costs Through The Rider To Help Reduce Carrying Costs.	15
F. Carrying Charges For The Company’s Deferred Fuel Costs Should Be Calculated At The Company’s Long-Term Cost Of Debt Instead Of Its Much Higher Weighted Average Cost Of Capital, And The Deferrals Should Be Reduced To Reflect Accumulated Deferred Income Taxes.....	18
G. The Over-Collection Of CSP’s Fuel Costs Should Be Returned With Interest To CSP’s Customers As Soon As Possible.....	19
III. CONCLUSION	20

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC")¹ files these comments to advocate that the 1.2 million residential customers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "OPC" or "Company")² should be charged rates for electric service that are no higher than what is reasonable, in keeping with the state policy espoused in R.C. 4928.02(A). In these proceedings, the Company seeks approval from the Public Utilities Commission of Ohio ("Commission" or "PUCO") to collect significant rate increases from customers for fuel

¹ R.C. Chapter 4911.

² Effective at the end of 2011, OPC and CSP (both of which were operating companies of AEP Ohio) merged, with OPC becoming the successor in interest to CSP. See *In re: AEP Ohio ESP Cases*, Case No. 11-346-EL-SSO, et al., OPC Application for Rehearing (January 13, 2012) at 2. The Commission approved the merger on March 7, 2012, effective December 31, 2012. *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, Entry (March 7, 2012).

costs (and a large amount of carrying costs) the Company purportedly incurred but did not collect during 2009-2011, as a result of “capped” or phased-in ESP rates.³

In its Applications, the Company estimated that it over-collected fuel costs in the amount of \$3,896,041 from its CSP customers as of December 31, 2011.⁴ It does not, however, seek to refund this amount to CSP customers in this proceeding. Instead it intends to return the over-collection in its March 2012 fuel adjustment clause case.⁵

In addition, the Company claims that it will have under-collected \$628,073,325 in deferred fuel charges from OP customers as of December 31, 2011.⁶ To begin collecting these charges, the Company proposes a Phase-In Recovery Rider (“Rider”). This rider will begin on February 1, 2012 and last until January 1, 2019.⁷ Under the Company’s proposal, it would also collect an additional \$279 million in carrying charges, based on its proposed interest rate of 11.15%, during the seven-year life of the Rider. The Company proposes to collect these charges from all customer classes, on a per-kwh rate.⁸ Under the Company’s proposed Rider, OPC’s residential customers would pay an additional \$0.51 per month for customers using 100 kWh up to \$10.12 per month for customers using 2,000 kWh.⁹

As discussed below, the Commission should follow the law by requiring the Companies to prove that the fuel costs, incurred from 2009-2011, were prudently

³ See Applications (September 1, 2011) (“Applications”), Exhibit A at 6.

⁴ Id., Exhibit A at 1.

⁵ Id. at 3.

⁶ Id. Exhibit A at 1.

⁷ Id. at 3.

⁸ See id., Exhibit A at 6-7.

⁹ See id., Exhibit A at 6.

incurred. This is in keeping with the fact that the Company has the burden of proving (under R.C. 4928.143(B)(2)(a)) that the fuel charges it seeks to collect from customers are prudently-incurred costs of fuel used to generate the electricity supplied under the standard service offer. Because there are pending proceedings where the fuel charges incurred from 2009-2011 are still being considered, if any rider is implemented it should only be implemented subject to refund and/or reconciliation or true up.

For now however, Commission should address whether the phase-in plan (including the level of deferrals and collection) is “just and reasonable.” under R.C. 4928.144. If and only if the Commission makes such a determination, then the Company would be permitted to collect such costs under R.C. 4928.143 and 4928.144. In this respect, as discussed below, OCC urges the Commission to reject the rider rates because they are based on ESP Rates that were not established in compliance with R.C. 4928.143 and because they are a result of a phase-in that is not just and reasonable. Accordingly, the base level of unamortized deferrals (and carrying costs) to be collected from customers should be reduced before collection begins.

In the event the PUCO does not adjust the unamortized deferrals, as requested by OCC, in order to protect customers during the appeal¹⁰ of the ESP 1 Remand Order,¹¹ the Commission should order the Rider to be collected, subject to refund, with interest accruing at the Company’s long term cost of debt. This will preserve the deferrals that are under appeal so there will be a remedy for customers if the appeal by OCC and the Industrial Energy Users-Ohio (“IEU”) is successful. Otherwise, customers will be

¹⁰ Ohio Supreme Court Case No. 12-0187.

¹¹ *In the Matter of the Application of Columbus S. Power Co.*, Case No. 08-917-EL-SSO et al. (“ESP I”), Order on Remand (October 3, 2011) (“Remand Order”).

harmed and a remedy that exists today may be taken away as the deferral “pot” dwindles down.¹² It would be patently unfair¹³ for the Commission to deprive customers of an adequate remedy, especially when these same customers paid \$63 million in retroactive rates and were given no refund of those unlawful collections because the rates had expired.¹⁴ Additionally, collecting the rider subject to refund will not unduly harm the Company, and is in fact consistent with the PUCO’s collection of provider of last resort (“POLR”) revenues subject to refund during the remand hearing.¹⁵

Beyond these fundamental issues there are also several problems with the Applications themselves. First, the Company proposes to collect the charges one year longer than the approved timeframe for collecting deferrals allowed by the Commission’s ESP 1 Order.¹⁶ Extending the collection out for one year would unlawfully add approximately \$43 million to the carrying costs that customers would pay assuming an interest rate of 11.15%.¹⁷ The Commission should only allow the Company to collect deferrals through the Rider no later than January 1, 2018, the time period approved in the Commission’s ESP 1 Order.

Second, in order to reduce the carrying charges that customers will pay, the Commission should calculate carrying costs using the Company’s long-term cost of debt instead of the Company’s higher weighted average cost of capital (“WACC”) and should

¹² OCC’s appeal seeks a reduction of the deferrals by \$368 million plus interest.

¹³ See *In re: Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655 (“*ESP 1 Appeal Decision*”), ¶ 17 (where the Court recognized the “apparent unfairness” of a no-refund rule, applied to the \$63 million in unlawful retroactive charges).

¹⁴ See *id.*, ¶¶ 15-21.

¹⁵ See *ESP 1*, Entry (May 25, 2011).

¹⁶ *ESP 1*, Opinion and Order (March 18, 2009).

¹⁷ See OCC Attachment 2.

calculate the charges on a net of tax basis. If the Commission takes these actions, it will save the Company's customers millions of dollars in carrying costs and reduce their monthly electricity bills at a time when many consumers are still struggling to make ends meet. This would be a good step toward fulfilling the Commission's duties under the law to ensure reasonably priced electricity for Ohio customers, a policy of the State of Ohio. See R.C. 4928.02(A).

Third, the Commission should order the Company to refund the over-collection of \$3,896,041 in deferred fuel charges for CSP customers as of December 31, 2011, plus accrued interest calculated at the same interest rates that will be allowed for the Companies, as soon as possible. The Company's proposal to return the over-collection in its March 2012 fuel adjustment clause, without interest payment, is not fair to CSP's customers, who over-paid for fuel from 2009-2011. Doing so would be consistent with the Commission's directive in the Remand Order to return funds (POLR) collected from customers, with interest (at a rate equal to the Company's long term debt) within the next billing cycle following the order.¹⁸

II. DISCUSSION

The outcomes of other proceedings have a direct bearing on whether customers should have to pay the charges the Company is requesting to collect from customers through the Rider. Those cases are the pending Fuel Adjustment Clause ("FAC") audit proceedings and the appeals of OCC and IEU from the Remand proceeding.

The pending fuel adjustment clause proceedings were initiated to examine the prudence and accounting of the Company's fuel costs incurred during the first ESP term.

¹⁸ Remand Order at 34.

These are the proceedings which the PUCO insisted upon as a condition for approving the phase-in rates.

The OCC's and IEU's appeal of the Commission's Remand Order seek to return to customers the revenues from POLR charges the PUCO found the Company failed to prove as "reasonable and lawful" under its electric security plan.¹⁹ The Commission must take those cases into full account in determining the rates to be paid under the phase-in recovery rider. The only way it can do so is to require the rider to be collected subject to refund and/or reconciliation or true up.

A. The Commission Cannot Approve The Collection Of The Rider Because It Is Based On ESP Rates That Were Not Established In Compliance With R.C. 4928.143 And A Phase-In Plan That Is Not Just And Reasonable Under R.C. 4928.144.

The deferral balance at the end of December 2011 is the basis (or the amortization principal) to charge customers increased rates under the Rider. But the Commission must first determine whether the Company has borne the burden of proving that the charges are reasonable and lawful under R.C. 4928.143(B)(2)(a). The Commission must determine as well whether the balance of deferred fuel costs and its collection amount to a just and reasonable phase-in under R.C. 4928.144.

The balance of the deferred fuel costs that the Company seeks to collect from its customers has been overstated. This is because the phase-in rates which directly drive the deferred balance included all authorized ESP rate increases, including rates for POLR. The deferrals thus have been overstated by POLR collections on a dollar-by-

¹⁹ Remand Order at 37.

dollar basis. And the PUCO found that the Company had not demonstrated that its POLR charges requested in the ESP were reasonable and lawful.²⁰

Moreover, the PUCO cannot by law approve the collection of the deferred fuel costs unless the phase-in plan which created the deferrals is found to be “just and reasonable.”²¹ It is axiomatic that if the rates established under R.C. 4928.143 are not found to be reasonable and lawful, then the phase-in plan implementing those rates cannot be “just and reasonable” as required under R.C. 4928.144.

While the Commission cannot adjust the phase-in rates at this time, it must remedy the unlawfulness of the phase-in plan. It must do so to bring all remaining elements of the phase-in plan into compliance with R.C. 4928.144. It must also do so to fulfill its responsibilities under R.C. 4928.02(A) to ensure “reasonably priced retail electric service.”

Accordingly, to get to the base level of deferrals that could lawfully be included in the phase-in recovery rider, the Commission should reduce the unamortized balance of deferrals by \$368 million, plus carrying charges, to account for the unlawful embedded costs of the deferrals that have accrued from 2009-2011. On a going forward basis, with such a reduced unamortized balance, the \$279 million in carrying charges would also be reduced. Only then is there an appropriate starting base level for the rider to be collected from customers. That base level for the rider itself would necessarily have to be collected subject to refund and/or reconciliation or true up, pending the various fuel proceedings that have not concluded to date.

²⁰ Remand Order at 37.

²¹ R.C. 4928.144.

B. The Company Must Meet Its Burden Of Proving That The Fuel Costs Were “Prudently Incurred” Costs Of Fuel Used To Generate Electricity Supplied Under The Offer, As Required By R.C. 4928.143(B)(2)(A).

In the ESP 1 Order, the Commission ordered the establishment of a FAC “with quarterly adjustments as proposed by the Companies, as well as an annual prudence and accounting review recommended by Staff....”²² Thus, the annual FAC Audits for the fuel-related costs the Company incurred in 2009, 2010, and 2011 are an essential and integral part of the fuel adjustment mechanism approved in the Company’s first ESP. Indeed they are the only way that the Commission can determine whether the fuel costs were prudently incurred and thus allowed to be collected under R.C. 4928.143(B)(2)(a).

There is no presumption that all fuel-related costs sought to be included in the Rider were prudently incurred and reasonable. In fact, the Company has the burden to prove these fuel costs were prudently incurred costs of fuel used to generate electricity supplied under the standard service offer, in order to comply with R.C. 4928.143(B)(2)(a).

If there are adjustments or disallowances for the fuel costs and associated carrying charges, as ordered by the Commission based on FAC audits, they must be fully reflected in the rates charged through the Rider. Otherwise, the Company’s customers will be overpaying for fuel-related costs and associated carrying charges. Additionally, the charges will be unlawful under R.C. 4928.143(B)(2)(a). In such a case the Commission, as a creature of statute,²³ has no authority to approve their collection from customers.

²² ESP 1 Order at 15.

²³ See e.g. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535 (1993).

The 2009 FAC audit has been completed and the Commission issued an order on January 23, 2012. OCC and other parties filed applications for rehearing on February 22, 2012. The Commission granted the requests for rehearing on March 21, 2012 for further consideration, but has not made a final determination in that case.

The 2010 FAC audit report was filed by the auditors on May 26, 2011 and this case is pending before the Commission.²⁴ The auditors for the 2011 FAC audit have been selected,²⁵ and it is expected that the 2011 FAC audit report will be filed in May 2012 similar to the schedules of the 2009 and 2010 FAC audit proceedings.

The adjustments that may result from the Commission's decisions on the three FAC annual audits should be fully accounted for in the Rider. In the 2009 FAC audit proceeding, the Commission ordered specific and substantial reductions of OPC's 2009 fuel costs.²⁶ In addition, the Commission ordered that these adjustments "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."²⁷ Further, the Commission directed the Company "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

²⁴ Case Nos. 10-268-EL-FAC, 10-269-EL-FAC, 10-870-EL-FAC, 10-871-EL-FAC, 10-1286-EL-FAC, and 10-1288-EL-FAC.

²⁵ See Case No. 09-872-EL-FAC, et al., Entry (January 25, 2011) at 2.

²⁶ 2009 FAC Audit Order at 12-14.

²⁷ Id. at 12.

OP ratepayers beyond the value of the reserve that AEPSC booked under the Settlement Agreement.”²⁸

As a result of the 2009 FAC Audit Order, there are substantial reductions to the FAC deferral balance as recorded by the Company. And there may be increased value over and above the \$41 million credited to OP’s fuel under-recovery from the West Virginia coal reserve. Customers of OP should receive the full benefit of such increased value. In other words, any additional value over and above the \$41 million credited should go to further reduce the substantial fuel deferral balance.

While there is no revised value for the West Virginia coal reserve at this time, a reduction of \$150 million to \$250 million in FAC deferral balance solely as a result of the 2009 FAC audit, could be a possible outcome. For discussion purposes, OCC has calculated the impact such a reduction would have on the carrying costs associated with the fuel deferrals (and on the customers that would be asked to pay them), and has included the calculations as Attachment 1 to these Comments.

Assuming a seven-year amortization period and an interest rate of 11.15%, both proposed by the Company, a \$150 million reduction in the fuel deferral balance would reduce the total carrying charges over the amortization period by \$67 million. The monthly collection from all of OPC’s retail customers will be reduced from \$10.8 million to \$8.2 million. A \$250 million reduction in the FAC deferral balance can reduce the total carrying charge over the amortization period by \$111 million, and reduce the monthly collection by \$4.3 million from customers.

²⁸ Id.

These calculations are made to point out the fact that the FAC deferral balance could be greatly affected by a revaluing of the West Virginia coal reserve. And this is a revaluing that was specifically ordered by the PUCO. As this is but one of several significant reductions pending to the FAC deferral balance it is essential that any rider approved by the Commission is approved subject to refund and/or reconciliation or true up. This is because the value of the deferrals and the carrying costs scheduled to be collected will be greatly affected by the adjustments that are likely to occur. For this reason, the Commission must explicitly rule that any Rider, set in this proceeding, is subject to refund and/or reconciliation or true up.

C. To Avoid An Inequitable Result That Could Harm Consumers, The Commission Should Make Collection Of The Rider Subject To Refund.

In order to protect consumers, the Commission should collect the rider, at a reduced level taking into account the \$368 million plus offset, subject to refund and or reconciliation or true up, pending the outcome of the FAC audits. Otherwise, customers may be forced to pay unlawful and unreasonable rates that may later be proven to be unreasonable and unlawful.

The Commission has, in the past, ordered utility rates to be subject to refund, and the Supreme Court has approved such measures. In 1983, for example, the Commission determined that a portion of the allowance related to Columbus & Southern Ohio Electric Company's construction work in progress for the Zimmer plant would be collected subject to refund to customers.²⁹ After the Commission's action was upheld on appeal,³⁰

²⁹ *In re Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Entry (November 17, 1982).

³⁰ *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 12.

the Commission ordered the utility to refund approximately \$4.5 million to its customers.³¹ The Commission ordered the collection to be subject to refund in order to protect customers in the event of a later decision that the utility was collecting more from customers than warranted by law, rule, or reason.

A more recent example of the Commission collecting rates subject to refund was in the Remand proceeding. In the ESP 1 Appeal, the Ohio Supreme Court determined that the POLR rates approved in the Commission ESP 1 Order were not supported by record evidence, and remanded that issue to the PUCO for further consideration.³² There, after the Court remanded the POLR issue (and the environmental carrying charges) to the PUCO, OCC and others requested that the PUCO either stay the collections of the POLR charge, or collect the charge subject to refund.³³ The PUCO, though first directing the Company to remove the rates from tariffs,³⁴ subsequently ordered the charges collected subject to refund.³⁵

The Commission can act now to protect consumers from further harm while the FAC audits are underway.. The Commission can protect consumers by only allowing a reduced base level rider to be collected, explicitly subject to refund and/or reconciliation or true-up. This will allow the Commission to subsequently adjust the level of the rider, consistent with its findings in the audit proceedings.

³¹ Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984).

³² ESP 1 Appeal, ¶ 24.

³³ Case No. 08-917-EL-SSO (Remand) (Apr. 26, 2012).

³⁴ Case No. 08-917-EL-SSO, Entry (May 4, 2012).

³⁵ Case No. 08-917-EL-SSO, Entry (May 25, 2012).

D. If The Commission Does Not Reduce The Rider For \$368 Million (Plus Carrying Charges) Of Unlawful Charges, Then It Should Only Allow Collection Of The Rider Subject To Refund.

On April 19, 2011, the Ohio Supreme Court issued a ruling on the OCC and IEU appeals from this Commission's ESP 1 Order. The Court reversed the PUCO on three grounds: (1) the Commission had engaged in retroactive ratemaking by allowing the Company to collect revenues lost due to regulatory delay³⁶; (2) there was no evidence that the POLR charges were cost based³⁷; and (3) there was no statutory authorization for allowing the Company to collect carrying charges on environmental investment made before January 1, 2009.³⁸ Two of these issues – POLR charges and carrying charges on environmental investment – were remanded to the Commission.³⁹

After conducting an evidentiary hearing, the Commission issued its Remand Order on October 3, 2011. The Commission concluded that, although given the full opportunity to present evidence, the Company failed to provide any evidence of its actual POLR costs.⁴⁰ The Commission directed the Company to refund the POLR charges that were collected subject to refund since June 2011, plus interest. Specifically, the Company was ordered to apply that amount to any deferrals in the fuel adjustment accounts of OPC and CSP as of the date of the Remand Order, with the remaining

³⁶ *ESP 1 Appeal Decision*, ¶¶ 9-11.

³⁷ *Id.*, ¶¶ 25-29.

³⁸ *Id.*, ¶¶ 32-35.

³⁹ *Id.*, ¶¶ 30, 35.

⁴⁰ Remand Order at 18-24.

balance credited to customers beginning in November 2011.⁴¹ The PUCO also ordered that the interest rate would be equal to the Company's long-term cost of debt.⁴²

With respect to the \$368 million (plus carrying charges) of POLR charges collected from April 2009 through May 2011, however, the Commission declined to apply that POLR revenue to offset the deferrals,, as requested by OCC and IEU. The Commission concluded that such a proposed adjustment “would be tantamount to unlawful retroactive ratemaking.”⁴³ The Commission noted that it “cannot order a prospective adjustment to account for past rates that have already been collected from customers and subsequently found to be unjustified.”⁴⁴

On December 14, 2011, the Commission denied a joint application for rehearing filed by OCC and Ohio Partners for Affordable Energy, and a separate application for rehearing filed by IEU. On February 1, 2012, IEU filed a Notice of Appeal of the Remand Order, docketed at the Supreme Court of Ohio as Case No. 12-187. On February 10, 2012, OCC also filed a Notice of Appeal of the Remand Order at the Supreme Court of Ohio in the same docket.

The unlawful charges the appeal seeks to remedy are a component of the ESP 1 rates that the Company now seeks to collect through the Rider in this proceeding. The ESP 1 rates can be properly described as residual rates because they were created through deferral accounting that was permitted in order to moderate or phase-in the ESP rate increases. The deferral accounting approved in ESP 1 allowed regulatory assets to be created in order to

⁴¹ Id at 38.

⁴² Id. at 34.

⁴³ Id. at 35-36.

⁴⁴ Id. at 36.

maintain “capped” ESP 1 rates for a three-year period. This is because the “capped” ESP 1 rates consisted of all elements of the Commission-approved ESP 1,⁴⁵ including non-fuel elements such as the unjustified POLR charges. Thus, on a dollar-for-dollar basis, the deferred fuel cost balances were overvalued by the approximately \$368 million (plus carrying charges) of unjustified POLR charges collected from customers from April 2009 through May 2011.

These are the very same deferrals which the Company now seeks to collect from customers through its Rider in this proceeding. As argued earlier, the Commission should reduce the unamortized balance of the deferrals by \$368 million plus carrying charges, in order to back out the unlawful effects of the POLR collections. If the Commission fails to do so, it should require the collections under the Rider to be made, subject to refund. This will provide a remedy for customers should the Court find for the appellants.

E. The Company’s Proposed Amortization Schedule Does Not Comply With The ESP 1 Order, And The Commission Should Require A Shorter Period For Collection Of The Deferred Fuel Costs Through The Rider To Help Reduce Carrying Costs.

In the ESP 1 Order, the Commission directed that “the 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.”⁴⁶ The timeframe was recommended by the Company.⁴⁷

The Company’s proposed amortization schedule, however, covers a timeframe from 2012 **through** 2018. This will add another twelve months of carrying costs, costs

⁴⁵ There were ESP provisions that were not considered part of the rate cap. These provisions included distribution base rate increases, the transmission cost recovery rider and future adjustments to the energy efficiency/peak demand rider. See ESP 1, Entry on Rehearing (July 23, 2009) at 9.

⁴⁶ ESP 1 Order at 23 (emphasis added).

⁴⁷ See *id.* at 20.

which will likely be collected from customers. Thus, the Company's proposed schedule for collecting deferred fuel costs does not comply with the ESP 1 Order. The additional year of amortization unnecessarily adds carrying costs that customers will be asked to pay through the unavoidable rider.

Further, the ESP 1 Order does not require that the Rider must be in effect for the entire six-year period from 2012 to 2018. Although the ESP 1 Order established the 2012 to 2018 timeframe for collecting the deferrals, that timeframe was qualified by the phrase "**as necessary** to recover the actual fuel expenses incurred plus carrying costs." The Order thus provides only that the Rider exist for as long as necessary to collect the deferred fuel costs, but must end by 2018. The Commission is not required to set a collection schedule that goes the full six years mentioned in the ESP 1 Order.

The Commission should order a shorter timeframe for the Company to collect the deferred fuel costs through the Rider. As OCC and others noted in the ESP 1 case, collecting deferrals over a longer timeframe increases the carrying costs that customers will pay.⁴⁸

The Company has presented a collection schedule that is heavily laden with carrying costs. In its Applications, the Company set out an 84-month amortization schedule, starting on February 1, 2012 and ending on January 1, 2019.⁴⁹ The cumulative carrying charges for this schedule are \$279,441,240.⁵⁰ Adding these cumulative carrying charges to the deferral balance of \$628,073,325 would mean that the Company's OPC

⁴⁸ See *ESP I*, Initial Post-Hearing Brief of The Ohio Consumer and Environmental Advocates (December 30, 2008) at 87-90.

⁴⁹ Application, Exhibit A.

⁵⁰ Id. at 2.

customers would pay more than \$907,000,000 for the fuel deferrals in the seven years of the collection plan – thirty percent of which would be carrying charges.

A shorter collection timeframe will ultimately save customers many millions of dollars. Specifically, OCC estimates that, using the Companies' proposed interest rate of 11.15%, a six-year amortization period (as ordered in the ESP 1 decision), as compared to the seven-year amortization proposed by the Companies, may save customers about \$43 million in carrying charges over the amortization period. A five-year amortization period and using the 11.15% interest rate, in comparison to the seven-year amortization, may save customers \$85 million in total carrying charges.⁵¹

A shorter collection timeframe may mean that the Company's customers would pay a slightly higher rate than the Company proposes if the same interest rates were used, as shown in Attachment 2 to these Comments. Using the same assumptions as in the Applications, the monthly collection for a six-year amortization period is about \$1.2 million more than the monthly collection of a seven-year amortization period. Similarly, the increase in monthly collection is about \$2.9 million if a five-year amortization period is used instead of a seven-year amortization period. While there would be higher monthly charges under a shorter schedule, the overall, costs to consumers would be less as consumers would save millions of dollars in carrying charges.

As discussed below, a shorter collection timeframe in combination with a reasonable carrying charge rate (based on the cost of long-term debt) will not only save customers many millions dollars in carrying charges but also may lower the monthly bills

⁵¹ See Attachment 2.

of the customers. The Commission should shorten the timeframe for collection of the deferred fuel costs under the Rider.

F. Carrying Charges For The Company's Deferred Fuel Costs Should Be Calculated At The Company's Long-Term Cost Of Debt Instead Of Its Much Higher Weighted Average Cost Of Capital, And The Deferrals Should Be Reduced To Reflect Accumulated Deferred Income Taxes.

The Commission should adjust the Rider to account for two corrections to the collection mechanism proposed by the Company. First, the Commission should order that once collection of the Rider begins from customers, the carrying charges on the deferrals should be reduced to the Company's long-term cost of debt, rather than the WACC. Consistent with PUCO precedent, once deferral amortization has begun, it is appropriate to use a carrying charge based on long-term cost of debt.⁵² This reflects the fact that once the deferral collection has begun, the risk of non-collection is significantly lessened, making a lower cost of capital (long-term cost of debt) more appropriate.

OCC has calculated carrying charges based on OPC's cost of long-term debt – 5.27% – (decided in the most recent Company distribution rate case⁵³) instead of the 11.15% WACC rate.⁵⁴ OCC estimates that, by using OPC's cost of long-term debt, the total carrying cost to customers may be reduced by about \$ 174 million over the six-year amortization period approved by the Commission (and \$155 million over the seven-year amortization period proposed by the Company), for an initial amortization balance of \$628,073,325.

⁵² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Opinion and Order at 24 (May 25, 2011).

⁵³ PUCO Case Nos. 11-351-EL-AIR, et al.

⁵⁴ See Attachment 3 to these Comments.

Second, the carrying costs included in the Rider should be calculated with a reduction for accumulated deferred income tax. During the deferral period, the balance on which the carrying charges are accrued should be reduced by the applicable deferred taxes. The deferred expenses create a deferred tax obligation that reduces a utility's current tax expense. The Company will only need to rely on short-term debt borrowed from the capital market to support the net of tax balance of deferred expenses until the expense is collected from customers. If the Company is permitted to accrue carrying charges on the gross-of-tax, and collect that from customers, it will be over-collecting the actual carrying charges of these fuel deferral balances.

Restricting the carrying charges to a net of tax basis is consistent with the PUCO's ruling on this issue in the FirstEnergy standard service offer case.⁵⁵ There, the Commission accepted arguments by OCC and the PUCO Staff, finding that the calculation of carrying charges on a net of tax basis is in accordance with "sound ratemaking theory" as well as Commission precedent.⁵⁶ The Commission should honor its precedent and rule in this proceeding, as it has in the past that carrying charges should be calculated on a net of tax basis.

G. The Over-Collection Of CSP's Fuel Costs Should Be Returned With Interest To CSP's Customers As Soon As Possible.

As noted above, the Company estimated a negative balance (i.e., an over-collection) of \$3,896,041 in deferred fuel charges for CSP customers as of December 31,

⁵⁵ *In re FirstEnergy ESP Case*, Case No. 08-935-EL-SSO, Opinion and Order (December 19, 2008).

⁵⁶ *Id.* at 58, citing *Cleveland Electric Illuminating Co.*, Case No. 88-205-EL-AAM, Entry (February 17, 1988) (ordering carrying charges for Perry nuclear power plant to be net of taxes) and *In re Cleveland Electric Illuminating Co.*, Case No. 92-713-EL-AAM, Entry (December 17, 1992) (ordering carrying charges on deferred program costs to be on a net of tax basis).

2011.⁵⁷ The Company, however, does not seek to refund this amount to CSP customers in this proceeding, but instead stated that it intends to return the over-collection in its March 2012 fuel adjustment clause case.⁵⁸ This approach is unfair to CSP's customers.

This over-collection should be returned to customers, with interest, as soon as possible. The Company's customers, including those served by CSP, are required to pay a very high carrying charge rate (i.e., the WACC) to the Company if there was an under-collection of fuel costs. It is only fair that if fuel costs are over-collected, the Company's customers (including those served by CSP) be compensated at the same interest rates approved for the Company. Indeed the Commission came to this very conclusion in the Remand Order. There, when it ordered a portion of the POLR charges to be returned, it required the Company to include interest at a rate equal to the Companies' long-term cost of debt.⁵⁹

III. CONCLUSION

In this proceeding, the Company seeks to collect charges from customers that are based on ESP rates that were not established in compliance with R.C. 4928.143. Additionally, the phase-in plan that produced these rates is not just and reasonable as required under R.C. 4928.144.

In order to remedy this unlawfulness, the Commission should protect customers by reducing the unamortized deferred balance by unsubstantiated POLR collections that are embedded in the deferral balance —amounting to an overstatement of the balance by

⁵⁷ Applications, Exhibit A at 1.

⁵⁸ Id. at 3.

⁵⁹ Case No. 08-917-EL-SSO, Order on Remand at 34 (Dec. 14, 2011).

\$368 million. Additionally the deferral balance should be reduced by carrying charges accrued on the deferrals pertaining to a \$368 million overstatement. This would then provide the Company with a base level rider that could be implemented, subject to refund and/or reconciliation and true up.

However, if this Commission declines to make such adjustments, it should nonetheless order the rider collected be collected subject to refund. This will allow subsequent adjustments to be made, either on the basis of pending fuel audits, or on the basis of a Supreme Court reversal.

In addition, in order to reduce the carrying costs that the Company's customers will be required to pay, the Commission should shorten the amortization timeframe for the deferred fuel costs and calculate carrying charges on a net of tax basis. Also, the carrying charges should be assessed at the Company's long-term cost of debt instead of the higher WACC. The Commission should also order the Company to return the Company's over-collection to customers, with interest, as soon as possible.

Respectfully submitted,

BRUCE J. WESTON

/s/ Maureen R. Grady

Terry L. Etter, Counsel of Record
Maureen R. Grady
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: 614-466-7964

etter@occ.state.oh.us

grady@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 2nd day of April 2012.

/s/ Maureen R. Grady

Maureen R. Grady
Assistant Consumers' Counsel

SERVICE LIST

Matthew J. Satterwhite
Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Thomas Lindgren
Devin Parram
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, OH 43215
Thomas.lindgren@puc.state.oh.us
Devin.parram@puc.state.oh.us

Colleen L Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

Mark A. Whitt
Melissa L. Thompson
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, OH 43215
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com
Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215
Dane.stinson@baileycavalieri.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, OH 43016
vparisi@igsenergy.com
mwhite@igsenergy.com
Chad A. Endsley
Ohio Farm Bureau Federation
280 North High Street, P.O. Box 182383
Columbus, OH 43218-2383
cendsley@ofbf.org

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

David F. Boehm
Michael L. Kurtz
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLaw.com
mkurtz@BKLaw.com
jkyler@BKLaw.com

Emma F. Hand
Dan Barnowski
SNR Denton US LLP
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005
emma.hand@snrdenton.com
dan.barnowski@snrdenton.com

OCC Attachment 1: Estimated Impact of Reduction in Amortization Principal

Amortization Period	Seven Years	Seven Years	Seven Years
Deferral Balance *	\$628,073,325	\$478,073,325	\$378,073,325
Reduction in Deferral Balance **		\$150,000,000	\$250,000,000
Annual Interest Rate ***	11.15%	11.15%	11.15%
Monthly Collection	-\$10,803,745	-\$8,223,534	-\$6,503,393
Differences in Monthly Collection		-\$2,580,211	-\$4,300,352
Annual Collection ****	-\$129,644,938	-\$98,682,406	-\$78,040,717
Total Collection *****	-\$907,514,568	-\$690,776,840	-\$546,285,022
Total Carrying Charges *****	\$279,441,243	\$212,703,515	\$168,211,697
Savings in Carrying Charges		\$66,737,727	\$111,229,546

* : See AEP Ohio PIRR Application (PUCO Case Nos. 11-4920-EL-RDR et al.), Exhibit A, page 1 of 7.

** : OCC's Examples of Possible Deferral Balance Reductions.

*** : See AEP Ohio PIRR Application, page 3.

**** : Monthly Collection X 12.

***** : Annual Collection X Years of Amortization.

*****: Total Collection minus Deferral Balance.

OCC Attachment 2: Estimated Impact of Various Amortization Periods

Amortization Period	Seven Years	Six Years	Five Years
Deferral Balance *	\$628,073,325	\$628,073,325	\$628,073,325
Annual Interest Rate **	11.15%	11.15%	11.15%
Monthly Collection	-\$10,803,745	-\$12,003,107	-\$13,702,867
Differences in Monthly Collection		\$1,199,362	\$2,899,122
Annual Collection ***	-\$129,644,938	-\$144,037,281	-\$164,434,401
Total Collection ****	-\$907,514,568	-\$864,223,685	-\$822,172,005
Total Carrying Charges *****	\$279,441,243	\$236,150,360	\$194,098,680
Savings in Carrying Charges		\$43,290,882	\$85,342,562

* : See AEP Ohio PIRR Application (PUCO Case Nos. 11-4920-EL-RDR et al.), Exhibit A, page 1 of 7.

** : See AEP Ohio PIRR Application, page 3.

*** : Monthly Collection X 12.

**** : Annual Collection X Years of Amortization Period.

*****: Total Collection minus Deferral Balance.

OCC Attachment 3: Estimated Impact of Amortization Interest Rates and Amortization Period

Annual Interest Rate	11.15%*	5.27%**	5.27%**
Deferral Balance ***	\$628,073,325	\$628,073,325	\$628,073,325
Amortization Period (year)	7	7	6
Monthly Collection	-\$10,803,745	-\$8,957,032	-\$10,193,928
Difference in Monthly Collection		-\$1,846,712	-\$609,817
Annual Collection ****	-\$129,644,938	-\$107,484,389	-\$122,327,130
Total Collection *****	-\$907,514,568	-\$752,390,723	-\$733,962,780
Total Carrying Charges *****	\$279,441,243	\$124,317,398	\$105,889,455
Savings in Carrying Charges		\$155,123,844	\$173,551,787

* : See AEP Ohio PIRR Application, page 3.

** : The cost of long-term debt as determined in the most recent AEP Ohio distribution case.

*** : See AEP Ohio PIRR Application (PUCO Case Nos. 11-4920-EL-RDR et al.), Exhibit A, page 1 of 7.

**** : Monthly Collection X 12.

***** : Annual Collection X Years of Amortization.

*****: Total Collection minus Deferral Balance.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/2/2012 4:07:20 PM

in

Case No(s). 11-4920-EL-RDR, 11-4921-EL-RDR

Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.