BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Companies)[1] are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

(2) By opinion and order issued March 18, 2009, as clarified by the entry on rehearing issued July 23, 2009, in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, the Commission modified and approved AEP-Ohio's application for an electric security plan (ESP) for 2009 through 2011, which included approval of a fuel adjustment clause (FAC) mechanism for CSP and OP, under which the Companies recovered prudently incurred costs associated with fuel, including consumables related to environmental compliance, purchased power costs, emission allowances, and costs associated with carbon-based taxes and other carbon-related regulations (ESP 1 order).[2] The approved FAC mechanism provided for quarterly reconciliations to actual FAC costs incurred by the Companies, which established the FAC rates for the subsequent quarter, as well as an annual audit of the accounting of the FAC costs. The Commission also authorized a phase-in of AEP-Ohio's ESP rates during the term of the ESP by deferring a portion of the annual incremental FAC costs such that the amount of the incremental FAC expense to be recovered from customers would be limited so as not to exceed specified percentage increases on a total bill basis.

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1 By entry issued March 7, 2012, the Commission approved and confirmed the merger of CSP into OP. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals* (Merger Case), Case No. 10-2376-EL-UNC.

2 *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.

(3) On May 14, 2010, Energy Ventures Analysis, Inc. (EVA) filed, in the present cases, a management/performance (m/p) and financial audit report in response to its annual audit of AEP-Ohio's FAC mechanism for 2009 (audit report).

(4) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.*, AEP-Ohio filed an application for approval of a second ESP to begin on January 1, 2012 (ESP 2 cases).[3]

(5) On September 7, 2011, a stipulation and recommendation (ESP 2 stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in the ESP 2 cases and several other cases pending before the Commission (consolidated cases).[4] The ESP 2 stipulation provided, *inter alia*, that the current FAC mechanism was to continue through May 31, 2015.

(6) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 stipulation (ESP 2 order).

(7) On January 23, 2012, the Commission issued its opinion and order in the present proceedings regarding the annual audit of AEP-Ohio's FAC mechanism for 2009 (FAC order). With respect to the financial audit recommendations contained in the audit report, the Commission adopted financial audit recommendations 1 through 5, as well as 6a through 6i, with the exclusion of 6b. The Commission also adopted m/p audit recommendations 2 through 6, as contained in the audit report.

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3 *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO and 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 Nos. 11-349-EL-AAM and 11-350-EL-AAM.

4 Merger Case, Case No. 10-2376-EL-UNC; *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 Pursuant to Section 4928.144, Revised Code*, 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 Pursuant to Section 4928.144*, Revised Code, Case No. 11-4921-EL-RDR.

In m/p audit recommendation 1, EVA recommended that the Commission consider whether any proceeds from a settlement agreement that American Electric Power Service Corporation (AEPSC) had executed with a coal supplier in 2007 (settlement agreement) should be credited against OP's FAC under-recovery for 2009. The settlement agreement was effectively a buy-out of the contract with the coal supplier after 2008. Pursuant to the terms of the settlement agreement, OP received a lump sum payment (made in three equal payments) and coal reserve in West Virginia. In the FAC order, the Commission determined that all of the realized value from the settlement agreement should be credited against OP's FAC under-recovery for 2009. The Commission specified that the portion of the $30 million lump sum payment not already credited to the ratepayers of OP, as well as the $41 million value of the West Virginia coal reserve booked when the settlement agreement was executed, should be credited against the FAC under-recovery. Additionally, because the present value of the West Virginia coal reserve is unknown and the permitting process is expected to enhance its value, the Commission indicated that a request for proposal (RFP) would be issued by subsequent entry to hire an auditor to examine the value of the West Virginia coal reserve. The Commission noted that the auditor would be expected to make a recommendation as to whether the increased value of the West Virginia coal reserve, if any, above the $41 million already required to be credited against OP's FAC under-recovery should accrue to ratepayers.

Finally, the Commission determined that the delivery shortfall agreement and the contract support agreement would not be further examined as part of the current audit. The Commission noted, however, that these agreements may be examined in a future audit, given that their impact on AEP-Ohio's fuel costs, if any, appeared to occur in time periods outside of the current audit.

(8) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(9) On February 22, 2012, applications for rehearing of the FAC order were filed by AEP-Ohio, Industrial Energy Users-Ohio (IEU-Ohio), and the Ohio Consumers' Counsel (OCC).

(10) On February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part (ESP 2 entry on rehearing). Finding that the signatory parties to the ESP 2 stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the stipulation.

(11) On March 2, 2012, in the above-captioned cases, AEP-Ohio filed a memorandum contra the applications for rehearing of the FAC order filed by IEU-Ohio and OCC. On March 5, 2012, IEU-Ohio and OCC filed memoranda contra AEP-Ohio's application for rehearing of the FAC order.

(12) By entry on rehearing issued March 21, 2012, the Commission granted the applications for rehearing of the FAC order to allow further consideration of the matters specified in the applications.

(13) The Commission has reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission and should be denied.

Re-adjudication of the ESP 1 Order

(14) In its fourth assignment of error, AEP-Ohio contends that the FAC order unreasonably and unlawfully modifies the ESP 1 order wherein the Commission directed that annual FAC audits examine fuel procurement practices and expenses for the audit period. AEP-Ohio offers that expanding the scope of the FAC audit, as litigated and decided in the ESP 1 order, violates the principles of res judicata and collateral estoppel. According to AEP-Ohio, the FAC audit period is strictly limited to January 2009 through December 2009. Similarly, in the Companies' fifth assignment of error, AEP-Ohio claims that through the FAC order, the Commission is unreasonably and unlawfully

retroactively modifying the decision in the ESP 1 order, which established the FAC baselines to facilitate the Companies' transition from a period without a FAC mechanism to a period with a FAC mechanism. With the establishment of the FAC baseline, AEP-Ohio asserts that the FAC order in this case is a retreat from the agreement with the Companies to implement fuel deferrals to stabilize recovery. AEP-Ohio reasons that the FAC baseline is res judicata and collateral estoppel prevents the Commission from revision of its decision in these proceedings. OCC and IEU-Ohio submit that these arguments are baseless. OCC states that the purpose of Commission audits, as was the case in these proceedings, is to assist the Commission in determining the prudence and true cost of a company's fuel-related purchases so that customers pay no more than what is reasonable for electricity. IEU-Ohio offers that the FAC order properly concluded that the Companies' claim of res judicata is without merit as 2009 fuel costs were not litigated in the first ESP proceedings.

(15) For the same reasons as stated in the FAC order, we again reject both of these arguments by the Companies. The scope and extent of the audit and the audit period were not revised or expanded as a result of the FAC order. As IEU-Ohio reasoned, the focus of the dispute in these proceedings is OP's 2009 fuel costs. OP's 2009 fuel costs were not litigated in the first ESP proceedings and could not have been litigated because the 2009 fuel costs were not known at that time. The purpose of the FAC audit was to evaluate 2009 fuel and fuel-related costs and the prudency of the Companies' fuel transactions, including the true costs and accounting accuracy of the fuel transactions. AEP-Ohio's claims to the contrary are without merit. Accordingly, we deny AEP-Ohio's fourth and fifth assignments of error.

Settlement Agreement

(16) In its first assignment of error, AEP-Ohio requests that the Commission clarify that the FAC order does not include the return of any amounts allocable to wholesale and non-Ohio retail jurisdictions.

(17) IEU-Ohio initially asserts that AEP-Ohio failed to offer evidence to support its jurisdictional argument as a part of the hearing and, is, therefore, precluded from raising the subject on rehearing. IEU-Ohio argues that AEP-Ohio selectively raises the jurisdictional argument, where it advocates just the opposite in its significantly excessive earnings proceedings,[5] and does so in this case to retain the benefits of the settlement agreement for its shareholders.

(18) We disagree with IEU-Ohio that AEP-Ohio is precluded from raising the jurisdictional issue at the rehearing stage. AEP-Ohio's claim is prompted by its interpretation of the language in the FAC order. AEP-Ohio witnesses and the financial auditor recognized that fuel expenses are allocated between Ohio retail expenses, non-Ohio retail expenses, or wholesale expenses. The same is true regarding the allocation of revenues. Therefore, we find that the record includes sufficient evidence to justify presentation of the claim by AEP-Ohio. We clarify that the 2009 FAC under-recovery need only be credited for the share of the settlement agreement allocable to Ohio's retail jurisdictional customers.

(19) In its third assignment of error, AEP-Ohio reasons that the FAC order's direction that all of the realized value from the settlement agreement should be credited against OP's FAC under-recovery amounts to selective and unlawful retroactive ratemaking in violation of *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 254, and *Lucas Cty. Commrs. v. Pub. Util Comm.* (1997), 80 Ohio St.3d 344. OCC believes that OP's arguments are faulty. In this case, OCC argues, and the Commission agrees, that the FAC order did not modify a previously established rate as part of a ratemaking proceeding, as was the case in *Keco*, or direct the issuance of a refund of unlawfully collected rates, as was the case in *Lucas Cty.*

AEP-Ohio mischaracterizes the FAC order. Further, the Commission acknowledged the Companies' arguments on retroactive ratemaking and refunds, as summarized in the

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5 See *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Order at 11-12 (January 11, 2011).

order (FAC order at 7-8). As explained in the order, the FAC adjustments ordered as a result of the settlement agreement are to align the fuel costs charged to ratepayers with the real economic cost of fuel for 2009. Nothing in OP's application for rehearing convinces the Commission that our decision should be reversed. Accordingly, OP's third assignment of error should be denied.

(20) In its sixth assignment of error, AEP-Ohio reasons that, since the auditor and the Commission did not find the settlement agreement to be imprudent, the FAC order unreasonably and unlawfully impairs the settlement agreement, which was executed by AEP-Ohio at a time when fuel costs and fuel contracts were not regulated. IEU-Ohio replies that the Companies' position is illogical as Rule 4901:1-35-03(C)(9)(a), Ohio Administrative Code, provides that a utility's FAC must include "any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales...." Thus, IEU-Ohio reasons that AEP-Ohio was required to account for the reduction in fuel costs.

(21) Despite AEP-Ohio's arguments to the contrary, it is not a condition precedent to reflecting the realized value of the Companies' fuel costs in the FAC, that the Commission find the settlement agreement imprudent. Pursuant to the requirements of division (B)(2) of Section 4928.143, Revised Code, to include the FAC mechanism as a part of the first ESP, AEP-Ohio was required to include "in the application any benefits available to the electric utility as a result of or in connection with such [FAC] costs including but not limited to profits from emission allowance sales and profits from resold coal contracts." The purpose of the FAC audit was to ensure and verify the FAC costs and expenses as well as to review the prudency of the Companies' transactions. Accordingly, we deny AEP-Ohio's sixth assignment of error.

(22) In its seventh assignment of error, AEP-Ohio argues that the FAC order selectively considers the settlement agreement, to direct a decrease in the fuel costs for 2009, but ignores the 2008 production bonus agreement also entered into when fuel contracts were not regulated. AEP-Ohio states that the 2008

production bonus agreement ensured that one of its suppliers remained in business and was able to provide the Companies' coal at below-market prices during 2008. AEP-Ohio admits that it did not seek to recover the $28.6 million dollar payment in 2009 FAC rates since it was incurred before the FAC regulatory structure was implemented. AEP-Ohio argues that this agreement is an example of why the Commission should not reach outside of the audit period to adjust AEP-Ohio's 2009 FAC under-recovered balance. Alternatively, AEP-Ohio states that the 2008 production bonus agreement fuel cost should be used to offset any "claw-back" into amounts relating to the settlement agreement. IEU-Ohio notes that AEP-Ohio overlooks the fact that the Companies received annual generation increases during the rate stabilization plan period (2005-2008),[6] which facilitated AEP-Ohio's recovery of increases in generation costs. As such, IEU-Ohio argues that customers paid their fair share of the total cost of the 2008 production bonus agreement.

(23) The Commission notes that the audit report did not recommend that the 2008 production bonus agreement be taken into consideration, in contrast to the auditor's recommendation in regards to the settlement agreement, nor recommend that the 2008 production bonus agreement be used as an offset to the benefits accrued as a result of the settlement agreement. Based on the generation rate increases built into the rate stabilization plan in effect prior to the first ESP in 2009, and the evidence of record in these proceedings, the Commission finds that the record does not support offsetting the adjustments to the deferred fuel costs for the settlement agreement, as directed in the FAC order, by the 2008 production bonus agreement. Accordingly, AEP-Ohio's seventh assignment of error is denied.

(24) In its first assignment of error, IEU-Ohio asserts that the FAC order unreasonably and unlawfully failed to require AEP-Ohio to include a carrying cost component in the value associated with the lump sum payment and West Virginia coal reserve to be credited against the FAC deferral balance. In its second

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6 See *In re AEP-Ohio*, Case No. 04-169-EL-UNC, Order at 15-19 (January 26, 2005); and *In re AEP-Ohio*, Case No. 07-1132-EL-UNC, Order at 3 (January 30, 2008).

assignment of error, OCC makes a comparable argument that the Commission erred in failing to require AEP-Ohio to credit customers for the interest accrued from 2009 until the date of the FAC order on the value of the lump sum payment and the West Virginia coal reserve. In its memorandum contra, AEP-Ohio replies that the award of interest or the reduction of carrying charges would constitute retroactive ratemaking and an unlawful modification of the ESP 1 order, and would also inequitably add to the under-recovery of actual FAC expenses for 2009.

(25) In the FAC order, the Commission determined that all of the realized value from the settlement agreement should be credited against OP's FAC under-recovery. We noted the unique circumstances of the settlement agreement and determined that, in order to assess the real economic cost of coal used during the audit period, more of the value realized as a result of entering into the settlement agreement should flow through to ratepayers by way of a credit to the FAC under-recovery. (FAC order at 12-13.) In accordance with our finding that all of the realized value from the settlement agreement should be credited to the benefit of ratepayers, we find that AEP-Ohio should flow through to its customers a carrying charge component in applying the credit to OP's FAC under-recovery. Such carrying charge component should be calculated in a manner consistent with calculation of the FAC deferrals, as approved in the ESP 1 order, including use of the approved weighted average cost of capital.[7] Thus, the Commission disagrees with OP's argument that the award of interest or the reduction of carrying charges constitutes retroactive ratemaking because a calculation that is consistent with the approved FAC deferrals is, by definition, not a modification of a previously established rate, as was the case in *Keco*. Accordingly, we find that IEU-Ohio's first assignment of error and OCC's second assignment of error should be granted.

(26) IEU-Ohio's second assignment of error is that the Commission unlawfully and unreasonably failed to direct AEP-Ohio to recalculate its phase-in recovery rider (PIRR) rates to reflect the immediate reduction of the FAC deferral balance that is

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7 ESP 1 order at 23.

collected through the rider. OCC raises a similar argument in its first assignment of error. In particular, OCC contends that the Commission unreasonably failed to specify that AEP-Ohio should immediately credit to customers the full value of the settlement agreement and also credit the increased value of the West Virginia coal reserve as soon as the valuation is completed by the auditor. OCC notes that an immediate credit to the FAC deferral balance will minimize carrying charges and reduce the amount that customers are charged through the PIRR. In response, AEP-Ohio argues that it would be unreasonable and imprudent to reduce the PIRR rates immediately. AEP-Ohio claims that, if an immediate credit is implemented and the FAC order is subsequently found to be unlawful, excessive revenue and rate volatility would result. AEP-Ohio adds that it is impossible to reduce the PIRR immediately to reflect the value of the West Virginia coal reserve, as its value is unknown and can only be accurately determined through a sale of the asset. Finally, AEP-Ohio notes that the arguments of IEU-Ohio and OCC fail to account for the fact that the PIRR as approved in the ESP 2 order has been effectively vacated by the ESP 2 entry on rehearing.

(27) Pursuant to Section 4903.15, Revised Code, Commission orders are effective immediately upon entry in the journal. Additionally, in the FAC order, the Commission specifically directed AEP-Ohio to credit the FAC under-recovery as addressed in the order, and did not grant a stay of the order (FAC order at 19). To the extent necessary to resolve any confusion on the part of the parties, the Commission now makes explicit its intention that AEP-Ohio should immediately implement the credit to reduce the FAC deferral balance in accordance with the FAC order and this entry on rehearing. We also note that AEP-Ohio's PIRR rates are the subject of separate proceedings in which the Commission will consider recovery of the deferred FAC costs and determine the proper rates, including any adjustments that may be necessary in light of the present cases.[8] With this clarification, we find that

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8 *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code,* 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 Pursuant to Section 4928.144,* Revised Code, Case No. 11-4921-EL-RDR.

IEU-Ohio's second assignment of error and OCC's first assignment of error should be denied.

(28) In AEP-Ohio's eighth assignment of error, the Companies note that the West Virginia coal reserve is an OP asset properly accounted for as part of the settlement agreement. The valuation of the coal reserve directed in the FAC order, according to AEP-Ohio, is based on the unlawful and unreasonable premise that AEP-Ohio ratepayers have an ownership interest in the coal reserve, in contrast to Commission precedent.[9] The Companies argue that ratepayers do not acquire an ownership interest in utility assets by paying the rates for service. Accordingly, AEP-Ohio reasons there is no legal basis for the FAC order's seizure of the value of the coal reserve to reduce the 2009 fuel costs or any future fuel costs.

(29) AEP-Ohio made similar arguments in its brief and again takes the opportunity to mischaracterize the FAC order. The FAC order does not imply or recognize any ratepayer ownership interest in the coal reserve. We agree with AEP-Ohio that ratepayers do not earn or acquire an ownership interest in the utility's assets as a result of paying for utility services. An ownership interest is not necessary for the Commission to order, as it did in the FAC order, the alignment of fuel costs with the benefits of AEP-Ohio's fuel contracts. For these reasons, we again reject AEP-Ohio's claims and deny the request for rehearing.

Determination of Value of Coal Reserve

(30) In its second assignment of error, AEP-Ohio requests that the Commission clarify the methodology to be used to determine the value of the West Virginia coal reserve to include, as an alterative to the valuation by way of an appraisal, the sale of the property after a final, non-appealable decision is issued in these cases. The Companies reason that the only way to determine the proper value of the coal reserve is by sale. The Companies also request that the Commission recognize that the

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9 *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of the Columbus Southern Power Company and Related Matters*, Case No. 88-102-EL-EFC, Order (October 28, 1988).

value of the coal reserve could be more or less than the $41.6 million net book value. IEU-Ohio reasons that an appraisal of the value of the coal reserve, as directed in the FAC order, is the most expedient means to determine the amount by which the FAC under-recovery should be credited.

(31) We reject AEP-Ohio's request to require the sale of the coal reserve to determine its value. It was not the intent of the FAC order to permanently terminate OP's ownership of the asset but to direct that the value of the coal reserve be determined by an independent, third-party. We expect that an independent appraisal will facilitate a more expedient resolution of the issue, even assuming more litigation, as the Companies imply, than the sale of the coal reserve. Nonetheless, we clarify that the value of the coal reserve, to be determined by an independent auditor, may be more or less than the $41.6 million net book value reflected on OP's books. Accordingly, we deny AEP-Ohio's request for rehearing on this issue.

Selection of Auditor

(32) In its third assignment of error, IEU-Ohio argues that the FAC order is unreasonable and unlawful because it did not direct Staff to hire and supervise an independent auditor and set a timeframe for the valuation of the West Virginia coal reserve. Asserting that the FAC order is unclear as to how the auditor will be selected, IEU-Ohio requests that the Commission provide clarification on this point to ensure that the audit is conducted in a fair, transparent, and timely manner. OCC, likewise, asserts in its third assignment of error that the Commission erred in directing AEP-Ohio to hire the auditor. OCC argues that the Commission should clarify that it will select an independent auditor to work under the direction of Staff and that OP's shareholders will pay for the audit. In response, AEP-Ohio maintains that the Commission should reject the requests of IEU-Ohio and OCC for an independent, Commission-hired auditor. AEP-Ohio contends that the value of the West Virginia coal reserve should be determined through a sale of the asset and that OP should be permitted to direct the sale.

(33) The Commission finds that the FAC order specifically indicated that an RFP would be issued by subsequent entry for the purpose of selecting and hiring an auditor to examine the value of the West Virginia coal reserve (FAC order at 12). Upon review of the proposals received in response to the RFP, the Commission will select an appropriate individual or firm with the technical expertise to independently determine the value of the West Virginia coal reserve. We note that both the auditor/appraiser and AEP-Ohio will be expected to adhere to the terms set forth in the entry selecting the auditor/appraiser. With this clarification, we find that the third assignments of error of IEU-Ohio and OCC should be denied.

Delivery Shortfall Agreement and Contract Support Agreement

(34) In its ninth assignment of error, AEP-Ohio argues that the Commission's conclusion that the delivery shortfall agreement and the contract support agreement may be examined in a future audit is unreasonable and unlawful for the same reasons asserted regarding its third through eighth assignments of error. In their memoranda contra, IEU-Ohio and OCC assert that the Commission properly determined that the delivery shortfall agreement and the contract support agreement may be considered in a future audit.

(35) In its fourth assignment of error, IEU-Ohio contends that the Commission unreasonably and unlawfully failed to direct AEP-Ohio to credit the benefits received under the contract support agreement against the FAC under-recovery. IEU-Ohio maintains that the contract support agreement contributed to increased fuel costs in 2009 and that, in the absence of a FAC mechanism, there will be little benefit to customers in future years when AEP-Ohio exercises its option to purchase coal at a discount off the market price beginning in 2013. Similarly, OCC asserts in its fourth assignment of error that the Commission erred in failing to credit customers for the increased price of coal that AEP-Ohio agreed to pay during 2009 pursuant to the contract support agreement and in failing to account for carrying charges. In its memorandum contra, AEP-Ohio contends that any benefit that it may receive from the contract support agreement will not ripen until it exercises its option to take the discounted pricing and will, therefore,

apply to time periods outside of the current audit, if the option is even fully exercised.

(36) The Commission finds that the fourth assignments of error of IEU-Ohio and OCC, as well as AEP-Ohio's ninth assignment of error, should be denied. We find that IEU-Ohio and OCC have raised no new arguments on rehearing that would warrant reconsideration of the FAC order and that there is no merit in AEP-Ohio's arguments for the reasons discussed above with respect to its third through eighth assignments of error. To the extent that a benefit is realized from the contract support agreement, such benefit will not accrue until after AEP-Ohio elects to exercise its option in 2013, which is well beyond the time period under review in the present proceedings. Therefore, although it is premature at this point to consider the purported benefits of the contract support agreement, we note that both the contract support agreement and the delivery shortfall agreement may be examined in a future audit of AEP-Ohio's fuel costs.

Fuel Procurement Procedures

(37) AEP-Ohio, in its tenth assignment of error, argues that AEPSC should not be required to add fuel procurement procedures as it completes the process of updating its policies and procedures manual. AEP-Ohio asserts that policies, not procedures, result in the most efficient procurement of fuel at the lowest reasonable price and, for that reason, the revisions to the manual are focused on procurement policies. AEP-Ohio requests that the Commission clarify that only the fuel procurement policies be updated in the manual and that the auditor is directed to review those updated policies in the next m/p audit proceeding. IEU-Ohio responds that AEPSC should be required to update the policies and procedures manual in accordance with EVA's recommendation. According to IEU-Ohio, the Commission should reject AEP-Ohio's attempt to avoid updating the manual to include fuel procurement procedures.

(38) In the FAC order, the Commission adopted m/p audit recommendation 5, which recommended that AEPSC finalize its update of its policies and procedures manual to reflect

current business practices and that the update be completed in time for it to be reviewed in the next m/p audit (FAC order at 6, 12; Commission-ordered Ex. 1A at 1-7). Although EVA enumerated eight items including certain procedural information that it hoped the updated manual would include, EVA recommended only that the update be completed and that the revised manual be reviewed in the next m/p audit (Commission-ordered Ex. 1A at 1-7, 2-11). Thus, we clarify that, in accordance with m/p audit recommendation 5, there is no specific requirement that AEPSC's policies and procedures manual include a formal procedural section. Upon review of the updated manual in the course of the next m/p audit, the auditor may recommend that the manual be further revised to include a procedural section, as the auditor deems necessary. With this clarification, AEP-Ohio's tenth assignment of error should be denied.

It is, therefore,

ORDERED, That the applications for rehearing filed by AEP-Ohio, IEU-Ohio, and OCC be granted or denied, as discussed above. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

GNS/SJP/sc

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Secretary