EXHIBIT JGB-1

CASES IN WHICH JOSEPH G. BOWSER HAS SUBMITTED TESTIMONY

In the Matter of the Application of The East Ohio Gas Company for Authority to Implement Two New Transportation Services, for Approval of a New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider, Case No. 96-1019-GA-ATA

In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues, Case Nos. 99-1729-EL-ETP, *et al.*

In the Matter of the Commission's Investigation Into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company and Monongahela Power Company Regarding the Installation of New Line Extensions, Case Nos. 01-2708-EL-COI, *et al.*

In the Matter of the Application of Columbus Southern Power Company to Adjust its Power Acquisition Rider Pursuant to Its Post-Market Development Period Rate Stabilization Plan, Case No. 07-333-EL-UNC

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals, Case Nos. 07-551-EL-AIR, *et al.*

In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan, and the Sale or Transfer of Certain Generating Assets, Case Nos. 08-917-EL-SSO, *et al.*, including the remand phase of this proceeding

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison 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 No. 08-935-EL-SSO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, Case Nos. 08-1094-EL-SSO, *et al.*

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 and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually, and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates, Case Nos. 11-351-EL-AIR, *et al*

EXHIBIT JGB-2/9

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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April 2, 2012

Attorneys for Industrial Energy Users-Ohio

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COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION

To mitigate the impact of rate increases authorized in the electric security plans ("ESPs") of Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (collectively, "Companies"), the Public Utilities Commission of Ohio ("Commission") authorized the Companies to defer amounts that exceeded certain bill limits. The Companies were permitted to carry those deferrals at their weighted average cost of capital ("WACC") during the deferral period. Moreover, the Companies were permitted to apply the carrying charge rates to deferrals that represent capital that was obtained at no cost to the Companies. The deferral balance has grown to over $600 million. Now that the deferral period is over, the Companies request that the Commission automatically reapprove the same generous terms during the recovery period.

But, in the Opinion and Order authorizing the Companies' ESP, the Commission did not predetermine the manner in which the deferral balance will be collected in the recovery period or rule upon the appropriateness of the amounts included in the deferral balance. The Commission's decisions regarding these issues will impact customers for years to come. If the Commission fails to set an appropriate rate, the phase-in will prove to have caused far more harm than good.

II. BACKGROUND

As noted below, the deferral balance has been and will continue to be impacted by several proceedings, some of which are ongoing and others that are yet to occur. It is important that any Commission order authorizing a recovery mechanism clearly provides a process for adjusting the phase-in recovery rider ("PIRR") to account for any future orders that may impact the deferral balance. Thus, any order authorizing the PIRR must clearly state that the PIRR is subject to reconciliation.

A. ESP I

On March 18, 2009, the Commission issued an Opinion and Order approving the Companies ESP.[1] The Commission authorized rate increases in the Opinion and Order and authorized the Companies to establish a fuel adjustment clause ("FAC") subject to reconciliation.[2] To mitigate the impact of the rate increases, the Commission authorized the Companies to defer amounts that exceeded certain bill limits.[3] The Commission

[1] *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 Nos. 08-917-EL-SSO, *et al.*, Opinion and Order (Mar. 18, 2009) (hereinafter "*ESP I*").

[2] *ESP I*, Opinion and Order at 15 (Mar. 18, 2009).

[3] *ESP I*, Entry on Rehearing at 8 (Jul. 23, 2009).

authorized the Companies to accrue carrying charges on the deferrals gross of tax effects at the Companies' WACC (approximately 11%).[4]

The Commission also authorized the Companies to recover the deferrals remaining at the end of the ESP through a phase-in mechanism from 2012 to 2018.[5] Although the issues surrounding OP's carrying costs and treatment of accumulated deferred income taxes ("ADIT") were determined through the end of the Companies' initial ESP, the Commission did not address any issues surrounding the appropriate amortization rate and the treatment of ADIT during the recovery period. The Commission also did not determine the total amount of the deferral balance, nor could it, given that the total rates subject to the bill limits were uncertain and several additional variables impacted the amount of the deferral balance.[6]

The deferral balance was further impacted when the Supreme Court of Ohio ("Supreme Court") reversed, in part, and remanded the Opinion and Order to the Commission for further review. On remand, the Commission determined that the Provider of Last Resort Rider ("POLR") charge was illegally authorized. Industrial Energy Users-Ohio ("IEU-Ohio") has advocated, to the Commission and on appeal to the Supreme Court that the effects of the remand decision must flow through and offset the deferral balance, just as the Commission has ordered the flow through of FAC changes.

[4] *ESP I*, Opinion and Order at 23 (Mar. 18, 2009).

[5] *Id.*

[6] During *ESP I*, customers' bills varied depending on many factors such as usage. Additionally, OP's total authorized ESP increases varied as a function of several different riders and mechanisms that were adjusted and reconciled during the *ESP I* term. OP's expenses deferred as a result of its FAC were also, and continue to be, subject to annual fuel audits that could alter the total amount of the deferral. Further, and to the extent that customers' bills were below the total rate caps, the Commission directed OP to begin amortizing the deferrals during *ESP I*. Thus, determining the amount of the deferral ahead of time would have been impossible.

B. The Phase-in Recovery Rider Application

On September 1, 2011, the Companies filed an application to establish a PIRR to recover its deferral balance. At the time OP filed its Application, OP predicted that the deferral balance on December 31, 2011, would be $628 million.[7] CSP predicted that it would have over-recovered approximately $3 million.[8]

The Application claims—without support—that the Companies were authorized to continue to collect carrying charges at a full WACC during the recovery period.[9] Because CSP customers had already paid off their deferral balance, the Application sought to collect the deferral balance from OP customers only.[10]

C. The Rejected Stipulation and the Modified ESP Application

On September 7, 2011, the Companies and others ("Signatory Parties") entered into a Stipulation and Recommendation ("Stipulation") which purported to resolve several proceedings, including the Companies' second ESP and the PIRR.[11] The Stipulation required the Signatory Parties to support the concept of passing securitization legislation.[12] The Stipulation also provided that during the recovery

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[7] Application, Ex. A at 1. It is unclear whether the deferral balance has been adjusted to reflect Commission ordered reductions for significantly excessive earnings and the unlawful POLR rider.

[8] *Id.*

[9] Application at 2-3.

[10] Application, Ex. A at 1. The Application did not specify whether the Companies are seeking to recover the PIRR from governmental aggregation customers. Likewise, the Application did not address requirements in Section 4928.20(I), Revised Code, which must be satisfied in order to impose a surcharge on customers of governmental aggregation.

[11] *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, *et al.*, Stipulation and Recommendation (Sep. 7, 2011) (hereinafter "*ESP II*").

[12] *Id.* at 25.

period, the PIRR would be amortized at a "debt carrying charge" rate of 5.34%.[13] Unlike the Application, the Stipulation provided that the PIRR would be collected from both OP and CSP customers.[14] The Companies claimed that it was logical to spread both the costs and benefits of the merger between CSP and OP customers.[15]

After approving the Stipulation[16] on December 14, 2012 the Commission, on rehearing, rejected the Stipulation and directed the Companies to refile their prior ESP rates.[17] As part of their "compliance" filing, the Companies filed a revised PIRR—allocating the PIRR to only OP customers and claiming that OP was entitled to amortize the PIRR at a full WACC.[18] On March 7, 2012, the Commission directed OP to remove the PIRR from its tariffs, stating that the Commission would separately address the Companies' Application.[19]

Also on March 7, 2012, the Commission approved the merger of OP and CSP.[20] While OP's Application indicated that the Companies did not intend to socialize the PIRR between CSP and OP customers, the Companies have stated this intent in their

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[13] *Id.* at 26.

[14] *Id.*

[15] *ESP II*, Opinion and Order at 57 (Dec. 14, 2011). While the Stipulation did not specify whether governmental aggregation customers would be subject to the PIRR, the Companies adopted this position in the proceeding.

[16] In approving the *ESP II* Stipulation the Commission held that the Companies tariffs were "subject to final review by the Commission. *ESP II*, Opinion and Order at 67. Moreover, IEU-Ohio requested in its December 20, 2011 Motion that rates be collected subject to refund. The Commission has not ruled on that motion.

[17] *ESP II*, Entry on Rehearing at 12 (Feb. 23, 2012).

[18] In contrast to the Application, the Companies' February 29, 2012 Compliance filing indicated that CSP has a small deferral balance remaining. *ESP II*, Compliance Filing (Feb. 29, 2012).

[19] *ESP II*, Entry at 5 (Mar. 7, 2012).

[20] *In the Matter of the Application of Ohio Power Company and Columbus and Southern Power Company to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

modified ESP Application.[21] Furthermore, the Companies have proposed delaying implementation of the PIRR until June 2013—and the Companies request authorization to continue to accrue carrying charges at a full WACC.[22] The Companies' also request that the Commission suspend the procedural schedule in this proceeding and consider the PIRR as part of the Modified ESP Application.[23]

D. The FAC and the 2009 Reduction

In *ESP I*, the Commission authorized the Companies to establish a FAC to recover their actual cost of fuel. As part of the implementation of the FAC, the Commission ordered the Companies to file quarterly FAC tariffs subject to reconciliation and annual audit.[24] In return for granting the Companies dollar for dollar recovery of FAC costs, the Commission required that the Companies' fuel costs be "allocated on a least cost basis to POLR customers and then to other types of sale customers."[25]

Because fuel costs are variable, increases and decreases in FAC costs impact whether the Companies exceeded the bill limits set in *ESP I*. Because the FAC is a self-reconciling mechanism, any reduction to approved FAC costs has a direct impact on the deferral balance and, therefore, the ultimate rate set in the PIRR.

Consistent with the self-reconciling nature of the FAC, on January 23, 2012, following an audit of the Companies' FAC for 2009, the Commission issued an Opinion and Order directing the Companies to credit against the deferral balance the benefits

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[21] *ESP II*, Modified Application (Mar. 30, 2012); *ESP II*, Direct Prefiled Testimony of Selwyn Dias at 10 (Mar. 30, 2012).

[22] *ESP II*, Modified Application at 14-15 (Mar. 30, 2012).

[23] *Id.*

[24] *ESP I*, Opinion and Order at 14-15,19 (Mar. 18, 2009).

[25] *ESP I*, Entry on Rehearing at 4 (Jul 23, 2009).

the Companies received from a settlement agreement with one of its coal suppliers.[26] The Commission determined that the Companies had voluntarily terminated a coal contract that would have provided customers' coal at below-market prices, kept the benefits for shareholders, replaced the contract with higher priced coal, and passed the higher costs onto customers. Thus, customers paid a much higher price than the Companies' actual cost of coal.

In light of this injustice, the Commission directed the Companies to credit the deferral balance for 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] The Commission directed that an auditor determine the real value of the coal reserve and that the Companies credit the additional value to the deferral balance.[28]

While the Commission order directed the Companies to immediately reduce the deferral balance, the Companies have opposed the Commission's order.[29] Because the Companies have not updated their Application, it is unclear whether the Companies have reduced the deferral balance to comply with the Commission's order.

The Companies have attempted to chisel away at the benefits that the Commission ordered be flowed through to customers by claiming that customers are

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[26] *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC, *et al.*, Opinion and Order at 12 (Jan. 23, 2012) (hereinafter "*2009 FAC Case*").

[27] *Id.*

[28] *Id.*

[29] *2009 FAC Case*, Application for Rehearing of Ohio Power Company at 15-16 (Feb. 22, 2012).

entitled to only the "jurisdictional portion."[30] But, pursuant to the Commission's order in *ESP I*, the Companies were required to allocate all of their lowest cost fuel to standard service offer customers; therefore, customers were entitled to the entire benefit of the below-market coal contract.[31] Thus, customers would be entitled to receive all of the benefits received due to the voluntary termination of the below-market contract, unless the Companies could demonstrate that it was not their least cost fuel.

The Commission's order was silent with respect to the treatment of carrying charges that have accrued on deferrals that were improperly booked. While common sense and equity would dictate that the associated carrying charges must also be removed, IEU-Ohio has requested that the Commission clarify this aspect of the Opinion and Order on Rehearing.[32] The Companies' contest the removal of carrying charges on the same legal basis that they contest the Commission's determination to flow through the benefits of voluntary contract renegotiation.[33] Thus, the Companies' argument has already been rejected and adds nothing new for the Commission to address.

In addition to the adjustments to the deferred balance for the 2009 FAC audit, two additional audits may affect the PIRR rate. The Commission has not issued an order regarding the audit of the Companies' 2010 FAC audit or 2011 audit. A decision in either proceeding may impact the level of the deferral balance and, therefore, the rate to be recovered through the PIRR. Of note, the auditor in the 2010 proceeding has

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[30] *Id.* at 12-14.

[31] *ESP I*, Entry on Rehearing at 4 (Jul. 23, 2009).

[32] *2009 FAC Case*, Application for Rehearing of IEU-Ohio at 8-10 (Feb. 22, 2012).

[33] *2009 FAC Case*, Ohio Power Company's Memorandum Contra Applications for Rehearing of Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel at 3-4 (Mar. 3, 2012).

suggested that it is improper to permit the Companies to accrue carrying charges on the portion of the deferral balance that was financed by ADIT, because the Commission would be permitting the Companies to accrue carrying charges on cost free capital.[34]

III. ARGUMENT

In this proceeding, the Commission must set an appropriate rate for the PIRR. Pursuant to Section 4928.144, Revised Code, the Commission must ensure that the PIRR is just and reasonable. Moreover, the Commission must ensure that the PIRR ensures that customers receive reasonably priced electricity.[35] These policies must guide the Commission in setting an appropriate rate for the PIRR. Particularly, the Commission should follow regulatory policies and precedent and require the Companies to amortize the PIRR at a debt rate and calculate carrying charges on a deferred balance net of ADIT. The Commission must reduce the deferral balance to account for the flow through effects of the remand, the amounts that were improperly collected under the rejected Stipulation, and the amounts credited as a result of the *2009 FAC Case*. Revenue responsibility must be limited to those customers that actually contributed to the deferral balance, and, governmental aggregation customers must not be subject to the PIRR. Finally, the Commission should specify that the PIRR, if approved, should be collected subject to reconciliation until such time as all outstanding Commission cases and appeals that may impact the deferral balance are resolved.

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[34] *In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 10-266-EL-FAC, *et al.*, Report of the Management/Performance and Financial Audits of the FAC of the Columbus Southern Power Company and the Ohio Power Company at 1-9, 1-10, 7-81, 7-82, 7-83, 7-84 (May 26, 2011).

[35] Section 4928.02(A), Revised Code, states that it is the policy of this state to ensure the availability of reasonably priced electric service. Section 4928.06(A), Revised Code, requires the Commission to ensure that the policy goals enumerated in Section 4928.02, Revised Code, are effectuated. Thus, the Commission must ensure that its actions and orders further the state policy goals enumerated in Section 4928.02, Revised Code.

A. The PIRR Must be Amortized Using a Carrying Charge at a Debt Rate

Although the Commission authorized the Companies to carry the deferral balance at a full WACC during the deferral period, the Commission did not authorize the Companies to amortize the deferral balance at a full WACC. Despite regulatory precedent to the contrary, the Companies claim that they are entitled to amortize the deferral balance at a full WACC during the recovery period. As evidenced by the Companies' Application, authorizing the Companies to amortize the deferral balance at a full WACC would cost customers an additional $279.4 million in carrying charges during the recovery period.[36] In comparison to the carrying charges that would accrue using a debt rate, this carrying charge figure is astronomical and should not be sanctioned by the Commission.[37]

Even using the debt-based carrying cost rate of 5.34% that the Companies have indicated would be its appropriate cost of debt would reduce the $279.4 million carrying charge figure downward to approximately $125 million. These high carrying charges would be reduced even farther if a more contemporary debt cost rate was used, as indicted below, and if the appropriate ADIT adjustment is made. Permitting the Companies to use the full WACC carrying charge creates a result that is unjust, unreasonable, and violates sound regulatory principles and Commission precedent.

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[36] Application, Ex. A at 2 (Sep. 1, 2011).

[37] Likewise, the Companies' Modified ESP proposal to delay implementation of the PIRR until June 2013, while continuing to accrue carrying charges at a full WACC should be rejected. While the Companies are seeking to extend the deferral period to further compound carrying charges, they have requested authorization to condense the amortization period. Essentially, the Companies request authorization to collect more money and do so over a shorter period of time.

It is common regulatory practice to amortize deferrals at a debt rate.[38] Commission precedent and the decreased risk associated with collecting a nonbypassable charge warrant applying a debt rate to the deferral balance. Newly issued seven-year BBB rated corporate bonds are currently being issued at an interest rate of approximately 3.1%. Accordingly, the Commission should direct the Companies to amortize the deferral balance at a 3.1% debt rate.

B. The PIRR Must Account for ADIT

The Companies have received a tax benefit for the ADIT associated with their fuel expense. ADIT is essentially cost free capital to the Companies.[39] For every $100 that the Companies have spent on fuel, they have only had to "borrow" $65 because the Companies have taken the tax benefit of the $100 expense as a direct reduction in federal income tax. Nevertheless, in *ESP I*, the Commission deemed it appropriate to permit the Companies to accrue carrying charges on amounts that the Companies were not required to finance through debt or equity. In light of this inequitable result, the auditor in the Companies' 2010 FAC case has recommended that the Commission reconsider the ADIT issue[40] and IEU-Ohio agrees—customers should not have to pay carrying charges on amounts that the Companies did not have to finance. Indeed, as the name implies, carrying charges are intended to be applied only to amounts that the Companies had to finance and "carry." Adjustments for ADIT have been made by this

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[38] *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).

[39] *ESP II*, IEU-Ohio Ex. 8; IEU-Ohio Ex. 4.

[40] *In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 10-268-EL-FAC, *et al.*, Report of the Management/Performance and Financial Audits of the FAC of the Columbus Southern Power Company and the Ohio Power Company at 1-9, 1-10, 7-81, 7-82, 7-82, 7-84 (May 26, 2011).

Commission for more than fifty years—and there is no reason to deviate from that practice now.[41]

Even if the Commission does not recalculate the carrying charges that have accrued on the deferral balance to date, the Commission should direct the Companies to calculate carrying charges net of ADIT during the amortization period. This approach would reduce the amount of carrying charges that would accrue on the deferral balance, because the Companies would be permitted to only accrue carrying charges on amounts that it actually financed.

C. The Commission Must Decrease the PIRR Rate to Account for the Recent FAC Decision

On January 23, 2012, the Commission issued an order in the *2009 FAC Case* directing the Companies to reduce the deferral balance for 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."[42] Despite the Commission's order, it is unclear whether the Companies have reduced the deferral balance. If the Companies have failed to reduce the deferral balance in compliance with the Commission's decision, the deferral balance would continue to accrue carrying charges at a full WACC. The Commission must direct the Companies to immediately reduce the deferral balance to reflect the Commission's Opinion and Order in the *2009 FAC Case*.

Similarly, the Commission must direct the Companies to reduce the deferral balance for any carrying charges that have accrued on a first in first out basis. The

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[41] *Cincinnati v. Public Utilities Comm.*, 161 Ohio St. 395, 405-06 (1954).

[42] *2009 FAC Case*, Opinion and Order at 12 (Jan. 23, 2012).

Commission has already determined that an adjustment to reflect the benefits associated with the coal contract termination does not constitute retroactive ratemaking. Thus, it would be unjust and unreasonable to not remove the carrying charges that have accrued on amounts that should not have been booked in the first place.

Given that the Commission has not issued a decision in the Companies' 2010 or 2011 FAC cases, it is likely that additional adjustments to the deferral balance will be required. Any order authorizing the PIRR must provide for ongoing review of the PIRR in the event that future adjustments are necessary.

D. The PIRR Must Account for the Flow Through Effects of the Remand and the Over-Collected Amounts under the Stipulation Rates

In setting a rate in the PIRR, the Commission must recognize the flow through effects of the remand of *ESP I*. IEU-Ohio has raised this issue on appeal to the Supreme Court and will not repeat its arguments again here.

The Commission should also adjust the deferral balance to account for the unreasonable and excessive amounts the Companies temporarily collected under the now rejected *ESP II*. In approving the *ESP II* Stipulation the Commission held that the Companies tariffs were "subject to final review by the Commission."[43] The Commission, however, ultimately rejected the Stipulation because it was not in the public interest. Thus, the tariffs never received final Commission approval. Because intervenors and the public have urged the Commission to refund the excessive increases collected by

[43] *ESP II*, Opinion and Order at 67. Moreover, IEU-Ohio requested in its December 20, 2011 Motion that rates be collected subject to refund. The Commission has not ruled on that motion.

the Companies, the Commission should direct the Companies to offset the deferral balance for the over-collection.[44]

E. The PIRR Should Not Be Socialized Between CSP and OP Customers

Because CSP customers have already paid off their rate increase in full, there is no deferral balance remaining for CSP customers.[45] In recognition of this fact, the Companies' Application proposed to assign revenue responsibility for the PIRR exclusively to OP customers. Deviating from this result and assigning revenue responsibility to CSP customers would misalign cost responsibility and benefits, which is inconsistent with regulatory principles.[46]

IV. CONCLUSION

The Commission authorized the Companies to phase-in their rates to prevent rate shock. The Commission had the best of intentions. But the Commission's good intentions will be frustrated if the Companies are permitted to dictate the course of events in contradiction to sound regulatory policy and to the detriment of customers' wallets.

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[44] This would include, among others: a credit for the increase in base generation prices, a credit for the amounts billed under the two-tiered capacity charge, etc.

[45] In contrast to the Application, the Companies' February 29, 2012 Compliance filing indicated that CSP has a small deferral balance remaining. *ESP II*, Compliance Filing (Feb. 29, 2012).

[46] *ESP II*, IEU-Ohio Exhibit 8 at 12-13 (Direct Testimony of Joseph Bowser). This policy is written into law with respect to governmental aggregation customers. Particularly, Section 4928.20(I), states, "Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits." The Companies have not attempted to satisfy this criteria for either CSP or OP customers of governmental aggregation. Because CSP customers received zero benefit whatsoever from the phase-in of OP's rates, it would be impossible for the Companies to demonstrate that CSP governmental aggregation customers received a benefit in proportion to the cost of the PIRR.

Respectfully submitted,

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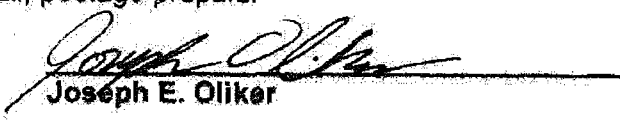
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio*, was served upon the following parties of record this 2nd day of April, 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



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ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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EXHIBIT JGB-3

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April 17, 2012

Via Electronic Filing

Barcy McNeil, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 11th fl.
Columbus, Ohio 43215

Re: PUCO Case Nos. 11-4920-EL-RDR, *et al.*

Dear Madame Secretary:

On March 14, 2012, the Public Utilities Commission of Ohio ("Commission") issued an Entry requesting interested parties to file Comments and Reply Comments regarding Ohio Power Company's Application to establish a phase-in recovery rider ("PIRR Application"). On April 2, 2012, the Industrial Energy Users-Ohio ("IEU-Ohio"), Commission Staff, Ormet Primary Aluminum Corporation, Office of the Ohio Consumers' Counsel, and the Ohio Energy Group filed Comments identifying substantial defects in Ohio Power Company's PIRR Application.

It is noteworthy that each of the parties that submitted Comments echoed similar concerns regarding Ohio Power Company's PIRR Application. In light of the general agreement among interested parties that the Commission should modify the PIRR Application to remove the excessive and improper amounts requested by Ohio Power Company, IEU-Ohio will not file Reply Comments.

Very truly yours,

/s/ Joseph E. Oliker

Joseph E. Oliker
McNEES WALLACE & NURICK LLC

JE/rg

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record this 17th day of April, 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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ATTORNEY EXAMINER

Summary: Correspondence letter that Industrial Energy Users-Ohio will not file Reply Comments electronically filed by Mr. Joseph E. Oliker on behalf of Industrial Energy Users-Ohio

EXHIBIT JGB-4 18

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FILE

April 3, 2012

The Honorable Greta See
The Honorable Sarah Parrot
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, Ohio 43215

RE: *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144, et al.*, Public Utilities Commission of Ohio Case Nos. 11-4920-EL-RDR, 11-4921-EL-RDR.

Dear Examiners See and Parrot:

On April 2, 2012, Staff of the Public Utilities Commission of Ohio filed its Comments and Recommendations in the above referenced matter in compliance with the Commission's March 14, 2012 Entry. After filing its Comments and Recommendations, Staff noticed a minor typographical error in its filing. On page 4 of the original Comments and Recommendations, Staff referred to "Attachment A." This reference is incorrect. The correct reference is "*Attachments 1 and 2*". Page 5 of the Revised Comments and Recommendations correctly states "Staff has prepared *Attachments 1 and 2*."

Respectfully submitted,

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REVISED COMMENTS AND RECOMMENDATIONS SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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Date Submitted: April 3, 2012

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THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REVISED COMMENTS AND RECOMMENDATIONS SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO[1]

I. INTRODUCTION AND BACKGROUND

On March 18, 2009, the Commission issued its Opinion and Order in which it approved the application of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, Companies) for an electric security plan (ESP) in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO (ESP 1).

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[1] Staff's Comments and Recommendations were initially filed on April 2, 2012 in compliance with the Commission's March 14, 2012 Entry. Staff now files these Revised Comments and Recommendations to correct an error on page 4 of its initial filing. On page 4 of the original Comments and Recommendations, Staff referred to "Attachment A." This reference is incorrect. The correct reference is "**Attachment 1 and 2**". Page 5 of this revised version now correctly states "Staff has prepared **Attachments 1 and 2.**"

In order to ensure rate or price stability and to mitigate the impact on customers during a difficult economic period, the Commission directed the Companies in the ESP 1 to phase-in a portion of the rate increase authorized over an established percentage for each year of the ESP. In addition, the Commission authorized the Companies to establish a regulatory asset to record and defer fuel expenses with carrying costs, at the weighted average cost of capital. The collection of any deferrals created by the phase-in that are remaining at the end of the ESP term shall occur from 2012 to 2018 via an unavoidable surcharge.

On January 27, 2011, the Companies filed an application, in Case No. 11-346-EL-SSO for authority to establish a Standard Service Offer pursuant to section 4928.143 of the Ohio Revised Code, in the form of an Electric Security Plan (ESP 2) to begin on January 1, 2012.

On September 1, 2011, in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR, the Companies filed an application requesting 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, 08-917-EL-SSO and 08-918-EL-SSO (ESP 1).

On September 7, 2011, a Stipulation and Recommendation (ESP 2 Stipulation) was filed by the Companies, Staff, and other parties to resolve the issues raised in Case Nos. 11-346-EL-SSO, 11-4920-EL-RDR, 11-4921-EL-RDR, and several other cases pending before the Commission. The ESP 2 Stipulation included a provision regarding the establishment and terms of a phase-in recovery rider (Rider PIRR).

Pursuant to an Entry issued on September 16, 2011, a number of the Companies' pending cases were consolidated for the purpose of considering the ESP 2 Stipulation. On December 14, 2011 the Commission issued an Opinion and Order in the consolidated cases, modifying, and adopting the ESP 2 Stipulation. The PIRR provisions of the ESP 2 Stipulation were not modified in the December 14, 2011 Opinion and Order. On December 22, 2011, the Companies filed its compliance tariffs.

On February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part. Furthermore, the Commission determined, on two independent grounds, that the Stipulation submitted by the Signatory Parties does not benefit ratepayers and the public interest. Thus, the Commission rejected the ESP 2 Stipulation and the application, as modified by the ESP 2 Stipulation. The Commission directed the Companies to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of their previous electric security plan (ESP 1).

On March 14, 2012, the Attorney Examiner noted that the application in the present cases was filed by the Companies less than a week prior to the filing of the ESP 2 Stipulation. In light of the Commission's rejection of the ESP 2 Stipulation, the Attorney Examiner found that the present cases should now move forward independently. The Attorney Examiner issued an Entry setting a procedural schedule for comments on the Companies' Application as follows:

April 2, 2012 – Deadline for the filing of comments on the Application by Staff and interveners; and,

April 17, 2012 – Deadline for all parties to file reply comments.

II. STAFF'S REVISED COMMENTS AND RECOMMENDATIONS

Based on its review of the Rider PIRR filing, the Staff makes the following comments and recommendations to the Companies' proposed collection of Rider PIRR. The Staff's comments and recommendations by topic are set forth below.

A. Once Rider PIRR collection commences the carrying charges should be calculated on the most recently approved Commission debt rate (5.34%) and not the 11.26 % pre-tax weighted average costs of capital (WACC) as currently proposed by the Companies.

The Companies propose to continue applying an annual WACC rate of 11.26% during the remaining seven year recovery (82 months) of the Companies' deferred fuel assets. The factor utilized is a pre-tax WACC factor which allows the Companies to recover an allowed rate of return consisting of debt and equity and the associated income tax impact on the equity return. The ESP 1 Order indicates that the Companies are entitled to WACC during the deferral period, but it does not address what happens once the collection commences. Staff agrees that the Companies are entitled to the pre tax WACC in determining the amount they are entitled to collect from ratepayers per the ESP 1 order during the deferral period. However, Staff believes that once this principal amount is determined for the calendar year ending 2011, the Companies should only be entitled to receive from ratepayers the time value of money (debt interest rate) because there is no longer any risk of collection to the Companies.

For illustration purposes, Staff has prepared Attachments 1 and 2 which compares the impact on ratepayers using various assumptions on the calculation of carrying costs. In each comparison, the December 2011principal balance of $537,263,771 was used. This balance is consistent with the amount utilized by the Companies in their February 29, 2012 filing in this case. It should be noted that at the time of these comments, the final December 2011deferred fuel balance was not fully known; therefore, Staff used the February 29, 2012 filing as the best estimate filed with the Commission.

All illustrations in Attachments 1 and 2 below are based on the February 29, 2012 filing and are reflective of OP fuel deferrals only as they have the largest impact to ratepayers. Staff would note that CSP also has a fuel deferral balance ($6,295,481 per the February 29th filing) and the same principles, policies, and recommendations proposed by Staff should be applied to the CSP deferred fuel balance if adopted by the Commission.

Attachment 1

OHIO POWER

Cost Impacts of Various Return Allowances

MONTHLY COMPOUNDING

Line No.	Description	Company As Filed	Difference	Staff Proposal	Difference	Staff Proposal Adjusted for ADIT	
		1	2	3	4	5	
1	Beginning balance	$ 537,263,771	$ -	$ 537,263,771	$ -	$ 537,263,771	
2	Related Income Tax Savings (ADIT)					$ (177,056,527)	1/
3	Balance financed by sources other than related income tax savings					$ 360,207,244	1/
4	Annual Rate of Return	11.26%	-5.92%	5.34%	0%	5.34%	
5	Carrying Cost	$ 235,339,409	$ (130,185,906)	$ 105,153,503	$ (34,653,615)	$ 70,499,888	1/
6	Total Cost to Customers	$ 772,603,180	$ (130,185,906)	$ 642,417,274	$ (34,653,615)	$ 607,763,659	

1/ The beginning balance in the carrying cost calculation was reduced by $177,056,527, the actual ADIT OP balance shown in FERC Form 1 for calendar year 2010. This amount should be updated using the 12/31/2011 Deferred Fuel ADIT balance once the 2011 FERC Form 1 is filed

As shown in Attachment 1, Staff proposes to use a long-term debt rate of 5.34% (Column 3) in calculating the carrying costs once collection commences on Rider PIRR. This debt rate represents the most recently approved Commission long term cost of debt. It is important to note that Column 3 is based upon the use of monthly compounding as proposed by the Companies in their February 29, 2012 filing. Using the Commission's most recently approved long-term cost of debt rate would result in collections from ratepayers over the remaining 7 year period (82 months) of $642,417,274 versus $772,603,180 should an 11.26% WACC rate be used. The change from the WACC to the debt rate saves ratepayers $130,185,906 in carrying costs. Because the Companies' risk of recovery is minimal once actual recovery begins, a lower rate (debt rate) should be

used as the appropriate carrying charge. Therefore, the Staff urges the Commission to adopt the debt rate when calculating the carrying costs for Rider PIRR going forward.

B. The deferred fuel balance at the end of December 2011 should be reduced for Accumulated Deferred Income Taxes (ADIT) in the calculation of carrying costs for Rider PIRR

Staff supports an adjustment that would reduce the principal balance used in the carrying charge calculations by the amount of the ADIT because this amount is a source of funds to the Companies that would not need financing. For income tax purposes, the ADIT results from a timing difference between the occurrence of the expense and the associated revenue. If the revenue and expense occurred in the same period there would be no tax impact. However, when there is a timing difference there is an impact on the income tax computation thereby creating ADIT. Put another way, the Companies deducted fuel expense for income tax purposes as incurred, but for regulated accounting were allowed to defer those fuel costs for future recovery. The differences between the amounts of fuel costs deducted for income tax purpose and the fuel costs that have been deferred for regulatory accounting purposes have created a temporary tax timing difference that results in the deferred fuel ADIT. This ADIT is shown in account 283 under the FERC Uniform System of Accounts that the Companies follow. For Ohio Power, the ADIT related to deferred fuel at December 31, 2010, as reported on page 277 of Ohio Power's FERC Form 1, is $177,056,527. This is shown as a specific line item within the account 283 balance on the Form 1. The ADIT that is directly related to the deferred fuel balance represents net tax savings that effectively finance a portion of the

deferred fuel balance. There is no carrying cost associated with the ADIT. The ADIT thus represents a cost-free source of funding for the deferred fuel balance that is provided by ratepayers and not investors. Therefore, it is the Staff's position that ADIT should have been used by the Companies as a free source of funds. This ADIT adjustment should have been reflected as a reduction to the principal deferred balance for purposes of the carrying cost calculation at the end of each year of the ESP 1 period (2009-2011).

This recommendation is consistent with the financial auditor's statement in the most recent FAC case.[2] The financial auditor brought to the Commission's attention that when applying the gross-of-tax WACC carrying charge to the deferred fuel balance there is not an off-setting adjustment to ADIT. The ADIT represents the tax savings realized by the Companies that effectively finances a portion of their deferred fuel balance. Since there was a directly related income tax savings, the Companies did not have to finance the entire deferred fuel amounts during the ESP 1 period (2009-2011). The Companies only had to finance the amount net of the directly related income tax savings, not the gross amount.

The Companies indicate that they relied on the "gross of tax" language from the ESP 1 Order and therefore have not applied the ADIT adjustment to the deferred fuel each year of ESP 1 (2009-2011). It is Staff's belief that "gross of tax" provision was applicable to the carrying cost *rate*, which then must be applied consistently to the balance that was financed by investors. Applying the "gross of tax" rate to the balance

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[2] *In re Columbus Southern Power*, Case Nos. 10-268-EL-FAC, *et al.* (Report of the Management/Performance and Financial Audits of the FAC of the Columbus Southern Power Company and the Ohio Power Company at 7-81) (May 26, 2011).

financed by investors is necessary because the equity financing cost is not tax deductible; consequently, in order for investors to collect the equity financing cost, the rate must be "grossed-up" for income taxes. The use of the "gross of tax" carrying cost rate meant the Companies would collect their full fuel expense including a gross up for the income tax expense the Companies needed to pay in order to collect the common equity portion of the carrying costs on an after-tax basis. The income tax gross up was accounted for in the gross-of-tax WACC the Companies were authorized to collect. The Companies recorded carrying costs at the "gross of tax" WACC during the deferral period as the Commission ordered. However, that "gross of tax" WACC was applied to the deferred fuel balance in total, which included (1) the portion financed by investors, and (2) the portion financed by income tax savings, upon which the Companies' investors were not reasonably entitled to a return.

It is Staff's opinion that applying a "gross of tax" WACC as the carrying cost rate, and offsetting the deferred fuel balance for the income tax savings represented by the direct related ADIT in the carrying cost calculations are not the same. The ADIT issue is a separate and distinct regulatory principle that Staff believes has been violated. The applicable regulatory concept is that investors are only entitled to earn a return on balances that they have financed. By applying the "gross of tax" WACC to the entire deferred fuel balance, investors are not only earning a return on the portion of the deferred fuel balance that they have financed, but would also earn a return on the portion of the deferred fuel balance that they have not financed, i.e., on the portion that has effectively been financed by the directly related income tax savings, which is measured

by the ADIT. It is not reasonable that any rate payer would have to pay to finance amounts that the Companies' investors did not finance. The deferred fuel balance at the end of year 2009 through 2011 should have been reduced by the ADIT for purposes of calculating carrying costs. As noted by the fuel auditors[3] the reduction for the ADIT simply was not applied to the deferred fuel balance during ESP 1.

Staff's recalculation to reflect the ADIT reduction is shown in Column 5 of Attachment 1. The FERC Form 1 for 2011 was not public by April 1, 2012 and therefore the ADIT utilized by Staff was the 2010 ADIT balance in Acct 283. This was the latest information filed with the FERC. Once the December 31, 2011 ADIT balance that is directly related to the Companies' December 31, 2011 deferred fuel balance becomes available, that balance should be substituted in the calculation for the December 31, 2010 deferred fuel ADIT balance used by Staff. Using the December 31, 2010 deferred fuel ADIT balance as representative of the non-investor (tax savings related) financing of the deferred fuel balance saves rate payers an additional $34,653,615 in carrying costs. If the 2009-2010 deferred fuel balances were properly reduced by the ADIT the carrying cost savings would have been higher due to the utilization of the pre-tax WACC during deferral versus the debt rate of 5.34% being proposed by Staff once collection begins for Rider PIRR.

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[3] *In re Columbus Southern Power*, Case Nos. 10-268-EL-FAC, *et al.* (Report of the Management/Performance and Financial Audits of the FAC of the Columbus Southern Power Company and the Ohio Power Company at 7-81) (May 26, 2011).

At a minimum, Staff is urging the Commission to rectify this regulatory error once collection begins for Rider PIRR by reducing the December 2011 OP principal balance of $537,263,771 and the December 2011 CSP deferred fuel balance of $6,295,481 by the latest ADIT balance known to the Companies as reflected on per the FERC Form 1.[4]

C. The Companies should be required to calculate the deferred fuel balance "going forward" using annual compounding and not monthly compounding.

For illustrative purposes, on Attachment 2 Staff has also calculated the impact of annual versus monthly compounding on both of the recommendations listed above. The use of annual compounding is consistent with the Commission's recognition of an annual interest rate in the Companies rate of return allowance. The calculations on Attachment 2 show that by using annual compounding instead of monthly compounding during the Rider PIRR collection period saves rate payers an additional $23,915,797 in carrying charges over the 7 year period. (The $23,915,797 savings utilizes the Staff's proposed debt rate of 5.34% and the 2010 FERC Form 1 ADIT reduction of $177,056,527).

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[4] The deadline for filing the 2011 FERC Form No. 1 is April 18, 2012. (www.ferc.gov/docs-filing/forms/form-1/transmittal-letter.pdf) Staff's calculations have used the December 31, 2010 Deferred Fuel ADIT balance from Ohio Power's 2010 FERC Form 1 (page 277, account 283). Using the December 31, 2011 Deferred Fuel ADIT balance, once the 2011 FERC Form 1 becomes available, will better match the ADIT that directly relates to the Deferred Fuel balance with the December 31, 2011 Deferred Fuel balance.

Attachment 2

OHIO POWER

Cost Impacts of Various Return Allowances

ANNUAL COMPOUNDING

Line No.	Description	Company As Filed	Difference	Staff Proposal	Difference	Staff Proposal Adjusted for ADIT	
		1	2	3	4	5	
1	Beginning balance	$ 537,263,771	$ -	$ 537,263,771	$ -	$ 537,263,771	
2	Related Income Tax Savings (ADIT)					$ (177,056,527)	1/
3	Balance financed by sources other than related income tax savings					$ 360,207,244	1/
4	Annual Rate of Return	11.26%	-5.92%	5.34%	0%	5.34%	
5	Carrying Cost	$ 235,339,409	$ (162,768,688)	$ 72,570,721	$ (23,915,797)	$ 48,654,924	1/
6	Total Cost to Customers	$ 772,603,180	$ (162,768,688)	$ 609,834,492	$ (23,915,797)	$ 585,916,695	
7	DIFFERENCE BETWEEN MONTHLY AND ANNUAL COMPOUNDING						
8	Total Cost to Customers			$ (32,582,782)		$ (21,844,964)	

1/ The beginning balance in the carrying cost calculation was reduced by $177,056,527, the actual ADIT OP balance shown in FERC Form 1 for calendar year 2010. This amount should be updated using the 12/31/2011 Deferred Fuel ADIT balance once the 2011 FERC Form 1 is filed.

D. The Companies should be required to make annual informational filings regarding the collection balance of the PIRR.

The Staff also recommends that the Commission direct the Companies to make annual informational filings detailing the deferred fuel recorded on their books during the 7 year recovery period. Specifically, the Companies should provide a breakdown of where collections stand per rate class and by operating company and the corresponding ending deferral balance. This should be based on the calendar year and filed on March 15th of the succeeding year.

III. CONCLUSION

The Staff has reviewed the Companies' Application in these cases for authority to create a PIRR rider to collect a related regulatory asset for fuel expenses. And, with adoption of the Staff's recommendations for modifying the calculation of the regulatory asset and annual informational filings detailed above, the Staff would respectfully recommend that the Commission approve the Companies Application.

Respectfully Submitted,

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IV. CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Revised Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by electronic mail upon the following parties of record, this 3rd day of April, 2012.

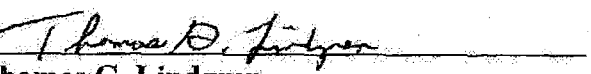

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Exhibit JGB-5

Returns on Equity

Year	CSP	OP	Total
2011	N/A	N/A	10.3%
2010	16.2%	9.8%	N/A
2009	20.8%	10.8%	N/A
2008	19.6%	9.8%	N/A
2007	23.2%	12.5%	N/A
2006	18.2%	12.1%	N/A
2005	14.7%	15.4%	N/A
2004	15.6%	14.3%	N/A
2003	19.8%	18.6%	N/A
2002	22.1%	18.2%	N/A
2001	25.5%	14.0%	N/A
	19.6%	13.6%	2001-2010 Average unweighted ROE

Common Stock Dividends

	(Thousands)			Combined net income	Ratio of common stock dividends to net income
2011	N/A	N/A	$650,000	$464,992	139.8%
2010	$102,500	$366,575	$469,075	$541,615	86.6%
2009	$150,000	$95,000	$245,000	$578,234	42.4%
2008	$122,500	$0	$122,500	$468,253	26.2%
2007	$150,000	$0	$150,000	$526,652	28.5%
2006	$90,000	$0	$90,000	$413,990	21.7%
2005	$114,000	$30,000	$144,000	$388,218	37.1%
2004	$125,000	$0	$125,000	$350,375	35.7%
2003	$163,243	$167,734	$330,977	$424,178	78.0%
2002	$65,300	$97,746	$163,046	$401,197	40.6%
2001	$82,952	$142,976	$225,928	$357,695	63.2%
		Total	$2,715,526	$4,915,399	55.2%

Sources: Dividends per page 118 of annual FERC Form 1s

Returns on Equity calculated as net income before extraordinary items divided by average proprietary capital net of any preferred stock, per pages 112 and 117 of annual FERC Form 1s