

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FOURTH 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 on March 18, 2009, as clarified by the entry on rehearing issued on 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.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

¹ By entry issued on 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*, 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.

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.

- (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 23, 2012, the Commission issued its opinion and order 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.

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 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 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.

- (5) 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.
- (6) 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).
- (7) On March 2, 2012, 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.
- (8) By entry on rehearing issued on 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.
- (9) On April 11, 2012, the Commission issued an entry on rehearing granting, in part, and denying, in part, the applications for rehearing filed by AEP-Ohio, IEU-Ohio, and OCC, as discussed in the entry (FAC entry on rehearing). With respect to AEP-Ohio's first assignment of error, the

Commission clarified that the 2009 FAC under-recovery need only be credited for the share of the settlement agreement allocable to Ohio's retail jurisdictional customers.

- (10) On May 11, 2012, IEU-Ohio filed an application for rehearing of the FAC entry on rehearing. In its only assignment of error, IEU-Ohio asserts that the FAC entry on rehearing is unlawful and unreasonable in that the Commission limited the amount of the credit for the settlement agreement to the portion allocable to the Ohio retail jurisdiction. IEU-Ohio requests that the Commission grant rehearing on this issue or, alternatively, clarify that all of the credit is allocable to Ohio retail jurisdictional customers. IEU-Ohio contends that, because AEP-Ohio was required, pursuant to its ESP, to allocate its least cost fuel to standard service offer (SSO) customers, the entire credit from the settlement of the below-market coal contract should be allocated to SSO customers. IEU-Ohio notes that AEP-Ohio has not claimed that the coal contract was not its lowest cost fuel source. IEU-Ohio argues that the costs of the contract would have been fully allocated to the Ohio retail jurisdiction and that any benefits received as a result of a renegotiation of the contract should likewise be fully allocated to Ohio retail jurisdictional customers. IEU-Ohio adds that AEP-Ohio's jurisdictional argument is only relevant in a traditional cost-of-service ratemaking context, which is inapplicable under circumstances involving default generation service. IEU-Ohio also notes that AEP-Ohio has not shown that Ohio customers should not receive the full benefits of the settlement agreement, which were accepted by AEP-Ohio in exchange for higher fuel costs paid by such customers. IEU-Ohio adds that AEP-Ohio failed to raise its jurisdictional argument during the hearing or briefing and should thus be precluded from making the argument at this point in the proceedings. Finally, IEU-Ohio argues that AEP-Ohio's jurisdictional argument should be rejected because it is selectively advanced only when it works to the detriment of Ohio customers.
- (11) On May 21, 2012, AEP-Ohio filed a memorandum contra IEU-Ohio's application for rehearing. AEP-Ohio responds that IEU-Ohio has raised no new arguments for the

Commission's consideration and that IEU-Ohio improperly seeks rehearing of an issue that has already been fully briefed and was merely clarified on rehearing. AEP-Ohio notes that IEU-Ohio raised the same arguments in its March 5, 2012, memorandum contra AEP-Ohio's application for rehearing. AEP-Ohio also asserts that the Commission properly found in the FAC entry on rehearing that the record supports AEP-Ohio's jurisdictional claim, noting that the testimony in the record is clear that the FAC involves only the retail share of AEP-Ohio's fuel costs and that the portion of the settlement agreement already passed through the FAC was based on the retail jurisdictional allocation. AEP-Ohio contends that the Commission's clarification that the 2009 FAC under-recovery need only be credited for the share of the settlement agreement allocable to Ohio's retail jurisdictional customers is required by state and federal law, prior Commission orders, and the record in these proceedings. AEP-Ohio notes that the Commission has no authority to regulate wholesale sales of electricity or the provision of retail electric service in other states. AEP-Ohio further notes that it has been consistent in recognizing the need to respect jurisdictional lines, contrary to IEU-Ohio's position. AEP-Ohio also adds that the supplier contract in question was not an available coal source from the outset of the ESP in 2009 and that AEP-Ohio fully complied with any obligation to allocate the lowest cost fuel actually available to it in 2009 to its SSO customers.

- (12) By entry on rehearing issued on June 6, 2012, the Commission granted IEU-Ohio's application for rehearing to allow further consideration of the matters specified in the application.
- (13) Upon review of the application for rehearing filed by IEU-Ohio on May 11, 2012, the Commission finds that the application should be denied. In the FAC entry on rehearing, the Commission clarified that the 2009 FAC under-recovery need only be credited for the share of the settlement agreement allocable to Ohio's retail jurisdictional customers. We explicitly disagreed with IEU-Ohio's argument that AEP-Ohio was precluded from raising this issue at the rehearing stage, finding that AEP-Ohio's claim was prompted by its interpretation of the FAC order and that there was

evidence in the record on this issue. We likewise find no merit in the arguments raised by IEU-Ohio in its May 11, 2012, application for rehearing and find that IEU-Ohio has raised no argument that was not already considered and rejected. In the FAC entry on rehearing, we properly clarified our intention that only the portion of the proceeds from the settlement agreement allocable to Ohio's retail jurisdictional customers must be applied to the 2009 FAC under-recovery. As in many cases before the Commission, it is necessary that certain allocations be made so that only the accounts, property, expenses, revenues, and so forth associated with rendering service to jurisdictional customers are included within the scope of the proceedings.

IEU-Ohio contends that, because AEP-Ohio was required pursuant to its ESP to allocate its least cost fuel to SSO customers, and the coal contract at issue was the Company's least cost fuel source, the Company should be required to allocate all of the settlement proceeds to SSO customers. In making its argument, IEU-Ohio points to the Commission's July 23, 2009, entry on rehearing in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, in which the Commission stated that FAC costs were "to continue to be allocated on a least cost basis to [provider of last resort] customers and then to other types of sale customers."³ IEU-Ohio appears to infer a meaning from this statement beyond what the Commission intended. The entry on rehearing does no more than emphasize that AEP-Ohio was expected to continue its usual fuel cost accounting procedures for allocating costs to SSO customers on a least cost basis, which, as the Company notes, is dependent on the average dispatch cost associated with a unit for a particular period of time, rather than any one particular supply contract. Accordingly, we affirm our prior findings in the FAC entry on rehearing.

³ *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, et al., Entry on Rehearing (July 23, 2009), at 4.*

It is, therefore,

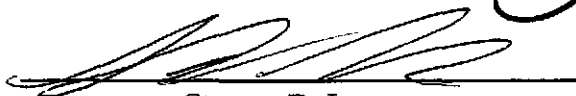
ORDERED, That the application for rehearing filed by IEU-Ohio on May 11, 2012, be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO




Todd A. Snitchler, Chairman



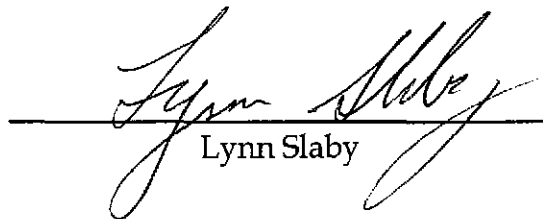
Steven D. Lesser



Andre T. Porter



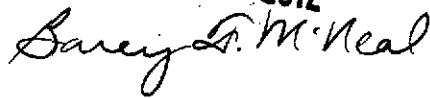
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