

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) Case No. 11-4920-EL-RDR
Deferred Fuel Costs Ordered Under Section)
4928.144, Ohio Revised Code.)

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

FIFTH ENTRY ON REHEARING

The Commission finds:

- (1) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company)¹ are public utilities and electric light companies within the definitions of Sections 4905.02 and 4905.03, Revised Code, and, as such, are subject to the jurisdiction of this Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On March 18, 2009, in Case No. 08-917-EL-SSO, *et al.* (08-917), the Commission issued its opinion and order regarding the application for an electric security plan (ESP) for CSP and OP (ESP 1 Order). Entries on rehearing were issued on July 23, 2009 (First ESP 1 Entry on Rehearing) and November 4, 2009. In the ESP 1 Order, the Commission directed AEP-Ohio, pursuant to Section 4928.144, Revised Code, to phase-in a portion of the rate increase authorized over an established percentage for each year of the ESP, in order to mitigate the impact of the rate increase for customers.² The Commission authorized AEP-Ohio to establish a regulatory asset to record and defer fuel expenses with carrying costs, at the weighted average cost of capital (WACC),

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 ESP 1 Order at 22-23.

with recovery through a nonbypassable surcharge to commence in 2012 and continue through 2018.³ The ESP 1 Order was appealed to the Ohio Supreme Court and subsequently remanded to the Commission for further proceedings.

- (3) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer pursuant to Section 4928.141, Revised Code.⁴ The application sought approval of a second ESP in accordance with Section 4928.143, Revised Code, to begin on January 1, 2012.
- (4) On September 1, 2011, in the above-captioned cases, AEP-Ohio filed an application for approval of a mechanism to recover its deferred fuel costs, as directed by the Commission in the ESP 1 Order. Specifically, AEP-Ohio requested approval of the creation of a recovery mechanism, in the form of a nonbypassable phase-in recovery rider (PIRR), to ensure recovery of its accumulated deferred fuel costs, including carrying costs, as approved by the Commission in the ESP 1 Order. AEP-Ohio proposed that the PIRR take effect with the first billing cycle of January 2012.
- (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 11-346 and several other cases pending before the Commission (consolidated cases),⁵ including the above-captioned cases. The ESP 2 Stipulation included

³ ESP 1 Order at 20-23; First ESP 1 Entry on Rehearing at 6-10.

⁴ *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 No. 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 No. 11-349-EL-AAM and 11-350-EL-AAM.

⁵ *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; *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.

provisions regarding the establishment and terms of AEP-Ohio's PIRR, as well as the securitization of the PIRR regulatory assets.

- (6) Pursuant to an entry issued on September 16, 2011, the consolidated cases were consolidated for the purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedule in the pending cases, including the present proceedings, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.
- (7) On October 3, 2011, the Commission issued an order on remand (ESP 1 Remand Order), addressing the Ohio Supreme Court's remand of the ESP 1 Order.
- (8) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation. The Commission did not modify the PIRR provisions of the ESP 2 Stipulation.
- (9) On February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part. 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 ESP 2 Stipulation, on grounds unrelated to the PIRR provisions. The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its first ESP.
- (10) By entry issued on March 14, 2012, the attorney examiner found that, in light of the Commission's rejection of the ESP 2 Stipulation, the present cases should move forward, and a comment period should be established in order to assist the Commission in its review of AEP-Ohio's application. Pursuant to the entry, initial and reply comments were due to be filed by April 2, 2012, and April 17, 2012, respectively.
- (11) In accordance with the procedural schedule established in these cases, timely initial comments were filed by IEU-Ohio, OCC,

OEG, Ormet, and Staff on April 2, 2012. Staff filed revised comments on April 3, 2012. Timely reply comments were filed by AEP-Ohio, OCC, and Ormet on April 17, 2012.

- (12) By finding and order issued on August 1, 2012, the Commission approved AEP-Ohio's application for a mechanism to recover its deferred fuel costs to the extent set forth in the finding and order and authorized the Company to establish the PIRR (PIRR Order).
- (13) 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.
- (14) On August 31, 2012, applications for rehearing of the PIRR Order were filed by AEP-Ohio, OCC, and IEU-Ohio.
- (15) On September 10, 2012, memoranda contra AEP-Ohio's application for rehearing were filed by OCC and IEU-Ohio. On that same date, AEP-Ohio filed a memorandum contra OCC's and IEU-Ohio's applications for rehearing.
- (16) By entry on rehearing issued on September 26, 2012, the Commission granted the applications for rehearing to allow further consideration of the matters specified in the applications.
- (17) 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.

Flow-Through Effects of Remand

- (18) In its first ground for rehearing, OCC argues that the Commission unreasonably and unlawfully failed to reduce AEP-Ohio's fuel deferral balance to account for the flow-through effects of the Ohio Supreme Court's remand of the ESP 1 Order and the rejected ESP 2 Stipulation. OCC contends that the PIRR is a mechanism that permits the Commission to make future rate adjustments in order to fully remedy the provider of last resort

charges that were the subject of the remand. OCC asserts that, in relying on the Court's prohibition against retroactive ratemaking, the Commission has misunderstood the Court's precedent and failed to recognize that retroactive ratemaking does not occur if a mechanism in the rates allows for prospective rate adjustments.

IEU-Ohio, in its third ground for rehearing, also contends that the Commission's failure to reduce the deferral balance to account for the flow-through effects of the remand of the ESP 1 Order is unlawful and unreasonable.

- (19) AEP-Ohio responds that the Commission appropriately declined to account for the flow-through effects of the remand of the ESP 1 Order because it would violate the prohibition against retroactive ratemaking, as explained by the Commission in the ESP 1 Remand Order. AEP-Ohio also contends that this issue is not a proper subject for consideration in the present proceedings, which pertain only to a recovery mechanism for the deferral that was already authorized by the Commission in the ESP 1 Order. Additionally, AEP-Ohio points out that IEU-Ohio admits that it has appealed the Commission's decision in the ESP 1 Remand Order regarding the flow-through effects of the remand. AEP-Ohio concludes that IEU-Ohio should not be permitted to raise the argument again here, given that the matter has been previously determined by the Commission and is now under review by the Ohio Supreme Court.
- (20) The Commission finds that OCC and IEU-Ohio have raised no new arguments regarding the purported flow-through effects of the Court's remand of the ESP 1 Order. We again decline to order the adjustment to the deferral balance that OCC and IEU-Ohio request. As we stated in the ESP 1 Remand Order, consistent with the Court's precedent prohibiting retroactive ratemaking and refunds, we cannot order a prospective adjustment to account for past rates that have already been collected from customers and subsequently found to be unjustified. Accordingly, we find that OCC's and IEU-Ohio's requests for rehearing on this issue should be denied.

Collection of Rates Subject to Refund

- (21) In its second ground for rehearing, OCC asserts that the Commission violated Section 4903.09, Revised Code, because it failed to explain why the PIRR rates should not be collected subject to refund, as OCC recommended. OCC contends that the Commission is required to comply with the statute so that the Ohio Supreme Court is able to review the Commission's reasoning in an order on appeal.
- (22) AEP-Ohio points out, as a general matter, that an evidentiary hearing was not required under the circumstances, given that the factual matters were already adjudicated in 08-917. Although the Commission solicited comments from the parties, AEP-Ohio argues that Section 4903.09, Revised Code, does not require the Commission to make findings on the recommendations made by the parties in their comments. AEP-Ohio adds that a Commission order generally takes effect upon issuance, and, therefore, there is no expectation that the order should be implemented subject to refund unless clearly indicated by the Commission in the order. According to AEP-Ohio, Commission orders are presumed lawful until such time as they are set aside by the Ohio Supreme Court, and there is thus no need for the Commission to issue an order subject to refund or to entertain such requests from OCC.
- (23) The Commission finds that the PIRR Order clearly stated the basis for our determinations in response to the comments filed by the parties. OCC's request that the PIRR rates be subject to refund is unnecessary under the circumstances. As we explained in the PIRR Order, the deferral balance is subject to adjustment as a result of the annual fuel adjustment clause (FAC) audit proceedings. In fact, the Commission ordered adjustments with respect to the annual audit of AEP-Ohio's FAC mechanism for 2009.⁶ Additionally, we note that OCC's request is contrary to past precedent.⁷ Therefore, the Commission finds

⁶ *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC, *et al.*, Opinion and Order (January 23, 2012).

⁷ *See, e.g., In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of an Additional Generation Service Rate Increase Pursuant to Their Post-Market Development Period Rate Stabilization Plans*, Case No. 07-63-EL-UNC, Entry on Rehearing (November 28, 2007); *In the Matter of the Application of The Dayton Power and Light Company for Approval of Tariff Changes Associated with the*

that the PIRR Order does not violate Section 4903.09, Revised Code, and that OCC's second assignment of error lacks merit and should be denied.

Accumulated Deferred Income Taxes (ADIT)

- (24) OCC's third ground for rehearing is that, in declining to reduce the deferral to account for ADIT, the Commission authorized AEP-Ohio to collect unreasonable carrying charges from customers in violation of Sections 4905.22 and 4928.02(A), Revised Code. OCC contends that the Commission has departed from sound ratemaking theory and Commission precedent without adequate explanation. Similarly, in its first ground for rehearing, IEU-Ohio argues that the PIRR Order is unlawful and unreasonable because the Commission failed to require AEP-Ohio to adjust for ADIT in calculating the carrying charges on the deferral balance, which violated generally accepted accounting principles, state policy, and sound regulatory principles and precedent.
- (25) AEP-Ohio responds that the Commission reasonably and lawfully upheld a prior adjudicated finding from the ESP 1 Order by declining to order an adjustment for ADIT. AEP-Ohio contends that this matter is the subject of a final, non-appealable order that is not open to reconsideration at this point. AEP-Ohio asserts that the doctrines of res judicata and collateral estoppel bar attempts by OCC and IEU-Ohio to relitigate the issue. AEP-Ohio urges the Commission to clarify that final adjudicated factual matters are not subject to reconsideration. AEP-Ohio argues that a practice of reconsideration and modification of prior factual determinations by the Commission would eviscerate the concept of finality.
- (26) The Commission thoroughly considered the arguments raised by the parties in their comments and declined to order an adjustment for ADIT. As explained in the PIRR Order, the parties failed to persuade the Commission that our approach in the ESP 1 Order with respect to this issue was inconsistent with

prior Commission precedent or sound regulatory practice. We also noted that, in the ESP 1 Order, the Commission found that the carrying charges on the deferral should be calculated without an adjustment for ADIT in order to ensure that AEP-Ohio recovers its actual fuel expenses, as required by Section 4928.144, Revised Code. We again affirm this finding, as it is consistent with the statute's requirement that, if the Commission orders a phase-in of rates, it must also authorize the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. The statute makes no mention of adjustments to account for tax effects. Given our finding that we have authorized a phase-in plan that is consistent with the directives of the statute, we find no merit in the arguments that the Commission has violated state policy or sound regulatory practice or precedent.

Additionally, with respect to generally accepted accounting principles (GAAP), Section 4928.144, Revised Code, provides that, if the Commission orders a phase-in, the order must provide for the creation of regulatory assets pursuant to GAAP. Although IEU-Ohio alleges that the PIRR Order does not comply with this statutory provision, IEU-Ohio does not explain how the creation of the regulatory asset associated with AEP-Ohio's deferred fuel expenses, which was actually authorized by the Commission in the ESP 1 Order, was contrary to GAAP. In fact, IEU-Ohio argues that AEP-Ohio must account for ADIT on its books as a regulatory liability and makes no claim that the Company's creation of the regulatory asset was in some way improper. In any event, the Commission believes that the question of whether ADIT should be reflected in the calculation of carrying charges to be included in the PIRR is a matter separate and apart from how AEP-Ohio maintains its books pursuant to GAAP. Therefore, we find that OCC's and IEU-Ohio's assignments of error on the issue of ADIT should be denied.

CSP's Deferral Balance

- (27) In its fourth ground for rehearing, OCC maintains that the Commission erred in authorizing AEP-Ohio to collect PIRR rates from CSP's customers. OCC notes that the Commission stated that AEP-Ohio's reply comments indicate that both OP and CSP

have deferral balances to be recovered through the PIRR. According to OCC, however, AEP-Ohio's reply comments do not refer to a deferral balance for CSP's customers. OCC points out that AEP-Ohio's application projected an over-recovery for CSP. As a related issue, in its fifth ground for rehearing, OCC contends that the Commission violated Section 4903.09, Revised Code, because it did not explain why it failed to order AEP-Ohio to refund to CSP's customers the amount of the over-recovery, plus accrued interest calculated at the same interest rate that the Company used to calculate carrying charges on its deferred fuel costs.

- (28) In its memorandum contra, AEP-Ohio explains that, on page five of its reply comments, the Company clearly stated that there is a deferral balance for CSP's customers. AEP-Ohio asserts that OCC's arguments are, therefore, without merit.
- (29) AEP-Ohio plainly indicated that CSP does in fact have a deferral balance to be collected from customers at page five of the Company's reply comments. As the factual premise underlying OCC's arguments is wrong, the Commission finds that OCC's fourth and fifth assignments of error lack merit and should be denied.

Due Process

- (30) In its second ground for rehearing, IEU-Ohio asserts that the PIRR Order is unlawful and unreasonable because the Commission arbitrarily and capriciously authorized AEP-Ohio to increase rates without affording due process to intervenors. Specifically, IEU-Ohio contends that it was denied the opportunity to develop its arguments through testimony and exhibits and to subject AEP-Ohio's positions to cross-examination. IEU-Ohio adds that the Commission failed to hold a hearing, even though the intervenors contested the fact that carrying charges have not been adjusted to account for ADIT. IEU-Ohio also notes that it offered testimony in 11-346 regarding ADIT but that the Commission elected to strike the testimony and instead instructed IEU-Ohio to present its arguments in the current proceedings. IEU-Ohio asserts that it was nevertheless denied a meaningful opportunity to demonstrate that the calculation of carrying charges should account for ADIT.

- (31) AEP-Ohio replies that there is no statutory right to a hearing, given that recovery of the deferred fuel expenses was authorized by the Commission in the ESP 1 Order, as required by Section 4928.144, Revised Code. AEP-Ohio argues that these proceedings do not involve a rate increase and are intended only to formalize the Company's collection of a charge that was established in the ESP 1 Order and delayed for the public good. AEP-Ohio contends that IEU-Ohio improperly claims that the charge is the matter at issue, when it was actually established in the ESP 1 Order, consistent with the requirements of Section 4928.144, Revised Code. AEP-Ohio notes that IEU-Ohio was afforded ample due process in 08-917 and, in fact, raised many of the same arguments in those proceedings. AEP-Ohio requests that the Commission deny IEU-Ohio's attempt to use the present cases as another chance to reiterate its prior arguments.
- (32) The Commission finds that IEU-Ohio was fully afforded the opportunity to develop its arguments through testimony and exhibits and to subject AEP-Ohio's positions to cross-examination during the evidentiary hearing held in 08-917. As we noted in the PIRR Order, AEP-Ohio's recovery of the regulatory asset by means of a nonbypassable surcharge was approved in the ESP 1 Order, as required by Section 4928.144, Revised Code. Accordingly, AEP-Ohio's application in the present proceedings is an application not for an increase in rates. Therefore, no hearing is required, and no due process violation has occurred. IEU-Ohio's second assignment of error should be denied.

Modification of Phase-In Plan

- (33) In its first ground for rehearing, AEP-Ohio maintains that the PIRR Order is unreasonable and unlawful because it modified previously adjudicated matters, contrary to the doctrine of res judicata. Specifically, AEP-Ohio argues that, in the PIRR Order, the Commission unreasonably and unlawfully modified its prior determinations in the ESP 1 Order and directed that the Company's carrying charges should be calculated based on its long-term cost of debt rate during the recovery period and that annual compounding should be used to calculate the deferral balance. AEP-Ohio contends that, pursuant to Ohio Supreme Court precedent, the Commission has only limited authority to

modify prior orders and that the Commission may not reverse an adjudicatory determination made in a prior final order that was undisturbed on appeal. AEP-Ohio notes that, once an appeal is filed, jurisdiction over the case passes from the Commission to the Court and, absent a remand, the Commission never regains jurisdiction over the issues determined in the case.

AEP-Ohio asserts that the Commission has misinterpreted Court precedent and that there is no general rule allowing the Commission to reverse prior orders as long as it justifies the reversal. According to AEP-Ohio, the Commission's determination in the ESP 1 Order that the carrying charges on the deferral would be calculated using a WACC rate is an adjudicated finding that cannot be changed after the fact, as opposed to a general position that the Commission may revisit under circumstances of prior error. Further, AEP-Ohio believes the Commission lost jurisdiction over the issue of the proper carrying cost rate after it was finally adjudicated at the conclusion of the appeal of the ESP 1 Order. Finally, AEP-Ohio argues that the Commission's modification of the carrying cost rate ignores the impact of applying a debt rate to the regulatory asset and fails to recognize that the Company's deferred fuel costs were already funded with a combination of debt and equity. AEP-Ohio adds that its capital structure should be adjusted to reduce the amount of long-term debt by a corresponding amount of the regulatory asset in order to avoid double counting the use of long-term debt as a funding source.

AEP-Ohio further contends that the Commission's directive to calculate the deferral using annual, rather than monthly, compounding financially harms the Company without justification. AEP-Ohio notes that all of its other riders with carrying costs are calculated on a monthly basis, which more accurately reflects the Company's carrying costs on a contemporaneous basis.

AEP-Ohio also asserts, as part of its first assignment of error, that the PIRR Order is unlawful and unreasonable in that the Commission retroactively modified the terms of the Company's expired ESP, which denied the Company its statutory right to withdraw from the ESP, pursuant to Section 4928.143(C)(2), Revised Code. According to AEP-Ohio, the Commission's

retroactive modifications have a significant financial impact on the Company of approximately \$129 million, which would have justified the Company's withdrawal from the ESP at its outset. Because the ESP has now expired and AEP-Ohio cannot withdraw from it, the Company contends that the Commission is estopped by Section 4928.143(C)(2), Revised Code, from unilaterally changing its prior findings in the ESP 1 Order.

- (34) OCC responds that the cases presently before the Commission are separate and distinct proceedings conducted for the purpose of approving AEP-Ohio's mechanism to recover its deferred fuel costs. OCC emphasizes that the ESP 1 Order only authorized the creation of the fuel deferral and not a recovery mechanism. In any event, OCC notes that the Commission must justify a change to a lawful order and that the Commission offered a reasoned explanation for its decision that a long-term debt rate is more appropriate for calculating carrying charges during the collection period. Additionally, OCC contends that AEP-Ohio failed to explain the supposed financial harm that would result from annual compounding. OCC also argues that the PIRR Order has no bearing on AEP-Ohio's statutory right to withdraw from an ESP, as these proceedings have the separate and distinct purpose of addressing the recovery mechanism. OCC concludes that the Commission is not estopped from directing AEP-Ohio to implement an appropriate recovery mechanism.
- (35) IEU-Ohio contends that the doctrine of res judicata does not apply because the ESP 1 Order did not address the carrying charge rate to be applied by the Company during the amortization period or the amount of the deferral balance that would be eligible for recovery. Like OCC, IEU-Ohio argues that the present proceedings involve separate issues from those addressed in the ESP 1 Order. IEU-Ohio notes that AEP-Ohio was required to file an application for approval of a recovery mechanism to commence amortization of the deferral balance. IEU-Ohio adds that the Ohio Supreme Court has previously determined that the Commission may modify the phase-in of rates authorized in the ESP 1 Order. IEU-Ohio avers that the Commission has broad discretion regarding the terms of a phase-in of rates, pursuant to Section 4928.144, Revised Code.

Regarding AEP-Ohio's right to withdraw from its ESP, IEU-Ohio notes that the Company cites no supporting precedent and that the Company's argument is meritless, as the Commission did not modify the ESP 1 Order. IEU-Ohio points out that the ESP 1 Order contemplated that AEP-Ohio would seek approval of a recovery mechanism at the end of the ESP term and that the Commission's approval, therefore, could not have occurred at a time when the Company's right to withdraw from the ESP still existed. IEU-Ohio adds that AEP-Ohio has not actually claimed that it would have exercised its right to withdraw from the ESP based on the Commission's directive that carrying charges accrue at a long-term debt rate. Finally, IEU-Ohio urges the Commission to reject AEP-Ohio's argument that its actual capital structure should be adjusted in light of the fact that the carrying charges during the recovery period will be calculated based on the long-term debt rate. IEU-Ohio argues that AEP-Ohio's request is inconsistent with past Commission practice, as the Commission does not allow adjustments to a utility's capital structure to reflect item-by-item treatment of regulatory assets. IEU-Ohio also notes that any equity infusion from AEP-Ohio's parent company is reflected in its actual capital structure.

- (36) The Commission finds no merit in AEP-Ohio's argument that our modification of the ESP 1 Order was unreasonable or unlawful. For the reasons enumerated in the PIRR Order, the Commission finds that it is appropriate for AEP-Ohio to calculate its carrying charges during the recovery period using a long-term cost of debt rate, as well as to use annual compounding to calculate its deferral balance on a going-forward basis. The Commission explained that it would be unreasonable for AEP-Ohio to apply the WACC rate to the deferral balance after collection begins, given that the risk of non-collection at that point is significantly reduced and in light of the ongoing economic difficulties that continue to impact ratepayers. We further noted that use of the long-term debt rate during the period in which the deferred fuel expenses are collected is in accordance with sound regulatory practice and established Commission precedent.⁸ With respect to Staff's

⁸ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company's Transmission Cost Recovery Rider*, Case No. 08-1202-EL-UNC, Finding and Order (December 17, 2008); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for*

recommendation that AEP-Ohio should use annual compounding to calculate its deferral balance, the Commission explained that Staff's recommended approach is in keeping with our recognition of an annual interest rate in the Company's rate of return allowance. The Commission, therefore, justified its modifications to AEP-Ohio's phase-in plan.

We do not agree with AEP-Ohio's assertions that the Commission has misinterpreted Ohio Supreme Court precedent. As we stated in the PIRR Order, the Court has continually recognized the Commission's authority to revisit earlier orders as long as the Commission justifies its modifications.⁹ As discussed above, the Commission explained the reasoning for its adjustments to AEP-Ohio's phase-in plan. Additionally, as IEU-Ohio points out, the Court recently addressed a similar question in a decision that emphasized the Commission's considerable discretion to determine the details of a phase-in of rates pursuant to Section 4928.144, Revised Code. The Court found no error in the Commission's modification of AEP-Ohio's phase-in plan to exempt the Company's economic development cost recovery rider from the ESP's rate caps. The Court specifically stated that, as a general rule, the Commission has discretion to revisit earlier regulatory decisions and modify them prospectively.¹⁰ We also agree with IEU-Ohio that there is no reason to adjust AEP-Ohio's actual capital structure, as the Company contends, in response to the modification of its phase-in plan. The Commission has consistently rejected the use of a hypothetical capital structure in cost of capital determinations.¹¹

We also find no merit in AEP-Ohio's argument that the Company was deprived of its right to withdraw from its ESP,

Authority to Modify Their Accounting Procedure for Certain Storm-Related Services Restoration Costs, Case No. 08-1301-EL-AAM, Finding and Order (December 19, 2008); *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, Opinion and Order (July 1, 2012).

⁹ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 523 (2011); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 343 (2007); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 399 (2006).

¹⁰ *In re Columbus Southern Power Co.*, 129 Ohio St. 3d 568, 569 (2011).

¹¹ See, e.g., *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Increase Its Rates for Electric Service to All Jurisdictional Customers*, Case No. 81-1256-EL-AIR, Opinion and Order (December 22, 1982).

pursuant to Section 4928.143(C)(2), Revised Code. AEP-Ohio offers no support for its theory that the Commission is estopped from modifying a phase-in plan that continues past the expiration of the ESP. As noted in the PIRR Order, AEP-Ohio's phase-in plan is subject to the ongoing supervision and jurisdiction of the Commission. Additionally, Section 4928.143(C)(2), Revised Code, specifically pertains to the Commission's approval and modification of an application for an ESP. The present proceedings concern AEP-Ohio's application for approval of a mechanism to recover its deferred fuel costs. As these cases do not involve approval of an ESP, Section 4928.143(C)(2), Revised Code, has no bearing on the outcome. Accordingly, AEP-Ohio's first assignment of error should be denied.

Securitization

- (37) In its second ground for rehearing, AEP-Ohio argues that the PIRR Order is unreasonable and unlawful to the extent that it undermines the securitization efforts that the Commission encourages pursuant to Sections 4928.23 through 4928.2318, Revised Code. Citing Section 4928.23(J), Revised Code, AEP-Ohio asserts that a basic prerequisite for securitization of a regulatory asset is that it be the subject of a final, non-appealable order. AEP-Ohio contends that no regulatory asset will ever be considered final and eligible for securitization, if the Commission is able to modify the terms of its approval of the asset, three years later, and subsequent to an appeal to the Court.
- (38) In its memorandum contra, OCC asserts that the present proceedings are the proper point of reference for determining whether the appeals process has been exhausted and thus whether phase-in costs may be securitized. OCC believes that AEP-Ohio's phase-in costs will be eligible for securitization only after any appeals of the present cases have been resolved. OCC concludes, therefore, that the PIRR Order does not undermine AEP-Ohio's securitization efforts. IEU-Ohio agrees, noting that there are several ongoing proceedings that must be decided by the Commission and the Ohio Supreme Court before the securitization process may move forward.


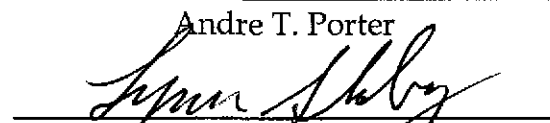
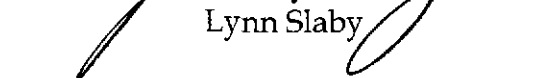
- (39) The Commission recognizes that the General Assembly has provided electric utilities with new authority to securitize regulatory assets to reduce long-term borrowing costs to be recovered from ratepayers, as provided in Sections 4928.23 through 4928.2318, Revised Code. In the PIRR Order, the Commission encouraged AEP-Ohio to pursue securitization of the regulatory asset associated with its deferred fuel expenses as expeditiously as possible. We do not agree with AEP-Ohio that the Commission's modifications to the Company's phase-in plan for the recovery period will undermine the Company's securitization efforts in any respect. AEP-Ohio offers no support for its claim that the PIRR Order will impede or delay its ability to pursue and achieve securitization. We find, therefore, that AEP-Ohio's second assignment of error lacks merit and should be denied.

It is, therefore,

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

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

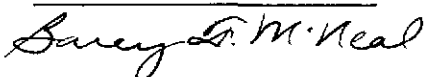
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
Steven D. Lesser
Cheryl L. Roberto
Andre T. Porter

Lynn Slaby

SJP/sc

Entered in the Journal

OCT 03 2012


Barcy F. McNeal
Secretary