

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-346-EL-SSO
Ohio Power Company for Authority to)	Case No. 11-348-EL-SSO
Establish a Standard Service Offer)	
Pursuant to § 4928.143, Ohio Rev. Code,)	
in the Form of an Electric Security Plan.)	

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority.)	

**MEMORANDUM CONTRA OF OHIO POWER COMPANY TO INDUSTRIAL
ENERGY USERS – OHIO’S AND THE OFFICE OF THE OHIO CONSUMERS’
COUNSEL’S MARCH 1, 2013 APPLICATIONS FOR REHEARING**

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On behalf of Ohio Power Company

I. INTRODUCTION

In its January 30, 2013 Entry on Rehearing (“January 30 Entry on Rehearing”), the Public Utilities Commission of Ohio (“Commission”) granted rehearing in order to, *inter alia*, clarify that Ohio Power Company’s (“AEP Ohio” or the “Company”) Retail Stability Rider (“RSR”) falls within the “default service” category under R.C. 4928.143(B)(2)(d). January 30 Entry on Rehearing at 15. It also granted rehearing regarding the statutory basis for the Company’s Pool Termination Rider (“PTR”), stating that R.C. 4928.143(B)(2)(d) also provides the Commission with authority to authorize that rider. *Id.* at 60. The Commission further provided some clarification regarding the items to which the 12% rate cap it ordered in the August 8, 2013 Opinion and Order (“August 8 Order”) applies and authorized “the deferral of any expenses associated with the rate cap pursuant to Section 4928.144, Revised Code, inclusive of carrying charges.” *Id.* at 40.

Industrial Energy Users – Ohio (“IEU”) and the Office of the Ohio Consumers’ Counsel (“OCC”) filed applications for rehearing of the January 30 Entry on Rehearing. AEP Ohio hereby files this memorandum in opposition to those applications for rehearing. For the reasons discussed below, each of the arguments advanced by IEU and OCC is without merit and does not form a basis upon which the Commission should grant rehearing of the January 30 Entry on Rehearing. AEP Ohio, therefore, respectfully requests that the Commission deny IEU’s and OCC’s applications for rehearing to the extent discussed below.

II. ARGUMENT

A. The Commission correctly determined that it has authority to authorize the RSR under R.C. 4928.143(B)(2)(d).

In seeking a second round of rehearing in this case, IEU and OCC raise several arguments regarding the lawfulness of approving the RSR under R.C. 4928.143(B)(2)(d), as further discussed below. First, IEU contends that the Commission may not establish a charge under that provision on a nonbypassable basis. Second, IEU argues that the fact that the RSR promotes stable electric service prices by freezing base generation rates at their current levels during the term of the modified ESP does not provide a sufficient legal basis to support approval of the RSR. Third, IEU challenges the Commission's finding that the RSR provides certainty regarding retail electric service rates. For its part, OCC argues that the record does not support the Commission's finding that the RSR is a charge that relates to default service. Finally, IEU claims that the Commission may not approve the RSR because it renders the modified ESP less favorable in the aggregate than a Market Rate Offer ("MRO"). None of the arguments that IEU and OCC advance are persuasive.

1. The Commission has discretion to establish a nonbypassable RSR under R.C. 4928.143(B)(2)(d).

IEU observes that subdivisions (B)(2)(b) and (c) of R.C. 4928.143 specifically require that charges established under them be nonbypassable, while subdivision (B)(2)(d) has no such requirement. IEU contends that, consequently, the Commission may not authorize a non-bypassable charge pursuant to subdivision (B)(2)(d). IEU raised an identical argument in its first application for rehearing. (IEU September 7, 2012 App. for Rehearing at 36-37.) The Commission considered and rejected that argument in its January 30 Entry on Rehearing. (January 30 Entry on Rehearing at 16.) IEU has not raised any new arguments in its second

application for rehearing, and the Commission should reject IEU's argument again. In any event, IEU's argument is meritless.

While the language of subdivision (B)(2)(d) does not require charges approved under that provision to be nonbypassable, it does authorize the Commission, in a proper case, to make a charge nonbypassable. Consequently, the fact that the Legislature requires that charges approved under subdivisions (B)(2)(b) and (c) be nonbypassable provides no basis for concluding that the Commission's authority to approve a nonbypassable charge under subdivision (B)(2)(d) has been eliminated. On the contrary, the language of subdivision (B)(2)(d) does actually address bypassability, and it supports the conclusion that a nonbypassable charge is permissible under that provision. Indeed, subdivision (B)(2)(d) explicitly authorizes the Commission to address "bypassability" of terms, conditions and charges that have the effect of stabilizing or providing certainty regarding retail electric services.

Moreover, the Commission has already adopted a similar nonbypassable charge for Duke Energy Ohio in its recent SSO case. *See In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO *et al.*, Opinion and Order (Nov. 22, 2011) (adopting a non-bypassable Electric Service Stability Charge ("ESSC") that conveys \$330 million to Duke). As Exelon witness Fein stated in his testimony in this proceeding, Duke's ESSC was a "similar construct" to AEP Ohio's proposed RSR. (Exelon Ex. 101A at 9.) Although Duke's financial stability charge was approved as part of a stipulation, the Commission may only approve lawful rate mechanisms, even when they are part of a stipulation. Of course, IEU and OCC – the same parties here complaining that the RSR is unlawful – *both supported adoption of the Duke*

stipulation that accomplished the same outcome. Accordingly, if Duke’s nonbypassable ESSC is lawful, as it most assuredly is, so also must AEP Ohio’s nonbypassable RSR be lawful. IEU’s contention to the contrary is without merit.

2. The Commission’s conclusion that the RSR provides price stability and certainty is sufficient to authorize the RSR under R.C. 4928.143(B)(2)(d) and is supported by the record.

In its January 30 Entry on Rehearing, the Commission correctly found that the RSR provides the price stability and certainty required for a charge to be authorized under R.C. 4928.132(B)(2)(d). (January 30 Entry on Rehearing at 15.) For the reasons discussed below, IEU’s arguments – that price stability is an insufficient basis upon which to authorize the RSR and that AEP Ohio has failed to demonstrate that the RSR promotes stable retail electric service prices and ensures that customers have certain and fixed rates – are without merit.

a. There is no requirement that a charge authorized under R.C. 4928.143(B)(2)(d) must make the *physical* supply of retail electric service more stable or certain.

IEU seeks an additional round of rehearing regarding the January 30 Entry on Rehearing on that grounds that “[t]he Commission’s conclusion that the RSR ‘freezes’ non-fuel generation rates so as to provide price stability or certainty . . . is not sufficient to authorize the [RSR].” (IEU App. for Rehearing at 7.) This is so, IEU contends, because “retail electric service,” defined in R.C. 4928.01(A)(27), is limited to the “physical ‘supply or arranging for supply’” of electric service and, therefore, the only charges that may be authorized under R.C. 4928.143(B)(2)(d) are those charges that “make[] the physical supply of retail electric service more stable or certain.” (*Id.*) Respectfully, IEU misconstrues the definition set forth in R.C. 4928.012(A)(27) and the scope of charges authorized under R.C. 4928.143(B)(2)(d).

Contrary to IEU's assertion, there is no reference to the physical supply of electricity in the definition of "retail electric service" set forth in R.C. 4928.012(A)(27). Rather, the term is defined expansively to include "any service involved in supplying or arranging for the supply of electricity to the ultimate consumers in this state, from the point of generation to the point of consumption." R.C. 4928.01(A)(27) (emphasis added). Thus, there is no statutory basis for IEU's argument that R.C. 4928.143(B)(2)(d) must be limited to only those charges that increase the stability of the physical supply of retail electric service. Moreover, such a limitation would be at odds with the generally recognized fact that the pricing of retail electric service is a fundamental aspect of that service. Because pricing is a fundamental aspect of retail electric service, stabilizing or making more certain the pricing of the service is encompassed by the broad statutory language.

Further, if the General Assembly had intended R.C. 4928.143(B)(2)(d) to apply only to charges affecting the stability of physical supply and not to charges that increase price stability, it would have said so. As the Supreme Court of Ohio has explained, "[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or insert words not used." *State ex rel. Celebrezze v. Board of County Comm'rs*, 32 Ohio St. 3d 24, 27, 512 N.E.2d 332 (1987), *quoting Columbus-Suburban Coach Lines v. Pub. Util. Comm.*, 20 Ohio St. 2d 125, 127, 254 N.E. 2d 8 (1969). *See also Wachendorf v. Shaver*, 149 Ohio St. 231, 236-237, 78 N.E. 2d 370 (1948). For the same reason, the fact that R.C. 4928.144 is limited to a phase-in of a rate or price that ensures "rate or price stability for consumers" has no bearing on the scope of charges permitted under R.C. 4928.143(B)(2)(d). Accordingly, because R.C. 4928.143(B)(2)(d) contains no limitation regarding the type of stability or certainty that a charge under that provision must provide, the Commission should reject IEU's attempt to limit the

provision's scope. The Commission also should affirm that its previous finding that the RSR will produce price certainty and stability satisfies the provision's requirement that a charge must "have the effect of stabilizing or providing certainty regarding retail electric service."

b. The record supports the Commission's finding that the RSR promotes stable electric prices and rate certainty.

The Commission has repeatedly found that the RSR promotes stable retail electric service prices and ensures that customers have certain and fixed rates. *See* January 30 Entry on Rehearing at 15-16; August 8 Order at 31-32. Most recently, the Commission recognized that the RSR "freezes non-fuel generation rates throughout the term of the ESP, allowing all standard service offer customers to have rate certainty throughout the term of the ESP that would not have occurred absent the RSR." January 30 Entry on Rehearing at 15.¹ It also reiterated its previous finding that "the RSR promotes stable retail electric service prices by stabilizing base generation costs at their current rates, ensuring [that] customers have certain and fixed rates going forward." *Id.* at 16, *citing* August 8 Order at 31-32. These conclusions are well supported by the record in this case. *See, e.g.*, AEP Ohio Ex. 101 at 19 (AEP Ohio witness Powers stating that "[t]he RSR will provide economic stability and certainty for AEP Ohio, [its] customers[,] and other stakeholders during the market transition term of [AEP Ohio's modified ESP] and until corporate separation and the Pool Agreement elimination is complete"); AEP Ohio Ex. 114 at 8 (AEP Ohio witness Thomas stating that the RSR "provides financial stability for the Company, allowing it to make the other provisions of the modified ESP [including frozen non-fuel base generation rates]

¹ As a related matter and with additional benefit to customers, the Commission also required the Company to reduce base generation rates for the final five months of the ESP term (*i.e.*, to scale base generation rates back to equivalent of \$188.88/MW-Day starting in January 2015). January 30 Entry on Rehearing at 37. Thus, as with other features of the Modified ESP, it can also be said that the RSR enables the Company to reduce base generation rates during the final five months of the rate plan.

possible”); AEP Ohio Ex. 116 at 15 (AEP Ohio witness Allen explaining that the RSR “provides greater clarity and stability for customers and AEP Ohio”); AEP Ohio Ex. 119 at 3-4 (AEP Ohio witness Dias explaining the benefits, including stability and certainty, that the RSR will provide); Tr. V at 1521-1522 (Mr. Allen explaining that the RSR provides stability to customers, including protecting retail customers from substantial swings in their rates).

Nonetheless, despite the record evidence and the Commission’s findings based on the evidence, IEU complains that AEP Ohio has not sustained its burden of proof that retail electric service is made more stable as a result of the RSR. (IEU App. for Rehearing at 9-10.)

Importantly, as IEU itself recognizes, IEU’s argument on this point is not new. IEU has already made, and the Commission has already considered and rejected, this argument. (*See* IEU September 7, 2012 App for Rehearing at 37-46; January 30 Entry on Rehearing at 16.)

Moreover, IEU’s argument is simply without merit. As described above, and as AEP Ohio explained in detail in its memorandum in opposition to IEU’s and other intervenors’ applications for rehearing of the Commission’s August 8 Order, there is ample support in the record for the Commission’s conclusion that the RSR promotes stable retail electric service prices and rate certainty. (*See* AEP Ohio September 17, 2012 Mem. Contra Intervenors’ Applications for Rehearing at 13-18 (explaining in detail the ways in which the RSR satisfies R.C.

4928.143(B)(2)(d)’s stability and certainty requirement).² The Commission should again reject IEU’s argument to the contrary.

IEU’s contention that the structure of the modified ESP precludes stability and certainty because other riders and charges can change and fluctuate over the ESP term even if non-fuel

² To the extent applicable to the arguments now asserted by IEU and OCC, AEP Ohio incorporates its September 17, 2012 Memorandum Contra Intervenors’ Applications for Rehearing by reference as if set forth fully herein.

base generation rates remain constant (*see* IEU App. for Rehearing at 8-9) also is not new and also should be rejected on rehearing. IEU made an argument in its application for rehearing of the August 8 Order that was nearly identical to the one it now raises. (*See* IEU September 7, 2012 App for Rehearing at 40-41.)³ Because IEU has already made, and the Commission has already considered and rejected, this argument, it should be disregarded as a basis on which to grant rehearing now. Moreover, IEU's argument is without merit because the amount by which other riders and charges could fluctuate over the modified ESP term is relatively small compared to the portion of rates that will be frozen (and ultimately reduced). That those riders and charges could fluctuate, thus, does not undermine the fact that the RSR will have the effect of or providing certainty regarding retail electric service. The Modified ESP allows all customers in AEP Ohio's service territory to come and go from SSO service throughout the entire ESP term. The Commission has also found that the Modified ESP is more favorable in the aggregate than an MRO. Because the record supports the Commission's finding that the RSR promotes stable electric prices and rate certainty, the Commission should deny IEU's application for rehearing.

3. The record supports the Commission's conclusion that the RSR relates to default service.

In response to requests that it clarify which of the categories set forth in R.C.

4928.143(B)(2)(d) to which RSR relates, the Commission found that the "RSR charge clearly

³ That IEU has simply repeated its previous argument on this point verbatim is evident from IEU's contention that the GRR "could eventually collect hundreds of millions of dollars." (*See* IEU App. for Rehearing at 9.) As the Commission knows, the GRR was intended to serve as a placeholder to authorize the Turning Point Solar project in Southern Ohio if the Commission later determined that AEP Ohio should move forward with the project. (*See* AEP Ohio Initial Br. at 15-16.) However, in its January 9, 2013 Opinion and Order in *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR, *et al.*, the Commission found, at page 26, that the signatory parties to the stipulation in that proceeding "have not demonstrated a need for the Turning Point project . . ." Thus, IEU's contention now that the GRR could collect funds that would cause its retail rates to fluctuate is baseless.

falls within the default service category . . .” January 30 Entry on Rehearing at 15. The Commission explained its finding as follows:

The RSR, as we specified in our Opinion and Order, freezes non-fuel generation rates throughout the term of the ESP, allowing all standard service offer customers to have rate certainty throughout the term of the ESP that would not have occurred absent the RSR. As a SSO is the default service plan for AEP-Ohio customers who choose not to shop, the RSR meets the second inquiry of the statute as it provides a charge related to default service. . . . the RSR clearly is a charge related to default service.

Id. OCC nonetheless contends that Commission failed to provide a basis to support its finding that the RSR relates to default service. (*See* OCC App. for Rehearing at 3-6.) OCC’s argument is misplaced, and its application for rehearing should be denied.

There has been no question throughout this proceeding that the RSR relates to AEP Ohio’s modified ESP SSO. *See, e.g.*, AEP Ohio Ex. 101 at 18-19 (AEP Ohio witness Powers explaining why the RSR was included as part of AEP Ohio’s modified ESP application); AEP Ohio Ex. 114 at 8 (AEP Ohio witness Thomas explaining that the RSR allows AEP Ohio “to make the other provisions of the modified ESP possible”); AEP Ohio Ex. 119 at 5; Tr. VI at 1894-1897 (explaining that the RSR is “a mechanism that strikes a balance for all the other provisions that are contained in the modified ESP II proposal” and that the RSR must be thought about “in context of the whole ESP” because it “ties in” and “strikes [a] balance” with AEP Ohio’s other proposed commitments under the modified ESP). Indeed, at least one of OCC’s own witnesses agreed that the RSR relates to AEP Ohio’s generation revenues. (Tr. VII at 2281.)

Moreover, the Commission itself has previously recognized that charges that relate to a SSO are “charges related . . . default service.” *See 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, *et al.*, Order on Remand, 18 (Oct. 3, 2011) (finding that nonbypassable generation charges associated with AEP Ohio’s provider of last resort obligation were “charges related to standby and default service” under R.C. 4928.143(B)(2)(d)); *In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices for the Electric Utility Industry*, Case No. 00-813-EL-EDI, *et al.*, Entry, 1 (Mar. 21, 2002) (using the terms “standard service offer” and “default service” interchangeably). Thus, there is ample support both in the record and in prior Commission precedent for the Commission’s finding that the RSR is a charge related to AEP Ohio’s default service. Accordingly, OCC’s application for rehearing is without merit and should be denied.

- 4. The Commission correctly found, again, that qualitative benefits of the modified ESP that are not readily quantifiable, including the accelerated transition to a competitive market that it enables, have very significant value. Thus, approval of the RSR does not render AEP Ohio’s modified ESP less favorable in the aggregate than the expected results of a MRO.**

IEU contends in its current application for rehearing that the Commission “again ignores the substantial negative effect of the RSR” and that this “results in an ESP that is less favorable in the aggregate than an MRO.” (IEU App. for Rehearing at 11). IEU continues to argue, as it did in its September 7, 2012 Application for Rehearing, at 34-36, that the qualitative benefits of the modified ESP, including the accelerated transition to a competitively bid procurement of 100 percent of SSO load, should be given essentially no weight in the statutory test’s comparison of the relative value of the modified ESP to the alternative of an MRO. The Commission has already thoroughly considered and rejected IEU’s arguments. (January 30 Entry on Rehearing at 9-12.) IEU has not raised any new arguments in its current application for rehearing, and the Commission should reject IEU’s arguments again.

Moreover, IEU's arguments remain unpersuasive. The Commission explained thoroughly how it arrived at its determination that the qualitative benefits tipped the balance in favor of the modified ESP over the alternative of an MRO:

The Commission affirms that under the statutory test, the modified ESP is more favorable, in the aggregate, than the results that would otherwise apply under a MRO. As we provided in our Opinion and Order, the fact that AEP-Ohio will be delivering and pricing energy at market prices in two and a half years is an invaluable benefit of this ESP, and it will create a robust marketplace for consumers. Even IEU concedes that the objective of accelerating the competitive bid process is a benefit to the public. Our determination that the qualitative benefits outweigh the costs associated with the modified ESP was driven by the fact that customers will be able to benefit from market prices through the enhancement of the competitive market place.

Further, customers still maintain protection from any unforeseen risks that may arise from a developing competitive market by having a reasonably priced SSO plan that caps rate increases at 12 percent. In approving the modified ESP, we struck a balance that guarantees reasonably priced electricity while allowing the markets to develop and customers to see future opportunities to lower their electric costs. The General Assembly has vested the Commission with discretion to make these types of decisions by allowing us to view the entire picture, in the aggregate, as to what the effects of the modified ESP would be, going beyond just the dollars and cents aspect of it. While parties may disagree with the Commission's policy decisions, there is no doubt that we have discretion to arrive at our conclusion that the modified ESP is more favorable than the results that would otherwise apply.

Id. at 10-11 (footnotes omitted).

With regard to IEU's criticism that by not including the costs associated with deferrals created by the Commission's decision in Case No. 10-2929-EL-UNC (the Capacity Case) in the price test component of the ESP/MRO comparison, while taking into account the qualitative benefits of the modified ESP, the Commission has acted unfairly, the comparison is inapposite and its criticism is unfounded. The Commission determined that it would be inappropriate to

include deferred costs that might remain after the term of the modified ESP in the price test because their amount, if any, was completely speculative and because, in any event, those deferrals would have no impact on the price test (and the ESP/MRO comparison in the aggregate) as they would be a cost of both the modified ESP and any MRO alternative:

Further, the Commission reiterates that any costs that may be associated with the deferral created by the Capacity Case are unknown at this time and dependent on actual customer shopping statistics. In any event, as AEP-Ohio points out and we explained in our Opinion and Order, [at 75], costs associated with the deferral would fall on either side of the statutory test, in light of the fact that the Commission has adopted a state compensation mechanism.

Id. at 9 (footnote omitted).

Conversely, the Commission also correctly found that the accelerated transition to competition that the modified ESP provides is a benefit that, while qualitative, is real and substantial and should be included in the aggregate ESP/MRO comparison. For all of these reasons, IEU's assignment of error on rehearing regarding the Commission's consideration of qualitative benefits of the modified ESP should be rejected once again.

B. The Commission correctly determined that it has authority to authorize the Pool Termination Rider (PTR) under R.C. 4928.143(B)(2)(d).

In its January 30 Entry on Rehearing, the Commission granted rehearing to clarify that R.C. 4928.143(B)(2)(d) provides a statutory basis for its approval of the PTR. January 30 Entry on Rehearing at 60. IEU's application for rehearing raises several arguments challenging that finding. First, as it did with the RSR, IEU wrongly contends that the Commission may not establish a nonbypassable charge under R.C. 4928.143. Second, IEU complains without basis that the Commission's conclusion that R.C. 4928.143(B)(2)(d) authorizes the PTR lacks record support. Third, IEU improperly claims (for at least the second time) that approval of the PTR violates R.C. 4928.02(H) or R.C. 4928.17. Each of IEU's arguments should be disregarded.

1. The Commission has discretion to establish a nonbypassable PTR under R.C. 4928.143(B)(2)(d).

IEU's first argument regarding the Commission's authority to authorize a nonbypassable PTR under R.C. 4928.143(B)(2)(d) is substantively identical to its argument regarding the Commission's authority to authorize a nonbypassable RSR. (*See* IEU App. for Rehearing at 6-7, 17.) As AEP Ohio explained above,⁴ however, the language of subdivision (B)(2)(d) does not preclude the Commission, in a proper case, from making a charge nonbypassable. Moreover, the language of subdivision (B)(2)(d) actually supports the conclusion that a nonbypassable charge is permissible under that provision. Accordingly, for the same reasons set forth above with regard to the RSR, IEU's contention that the Commission lacks authority to authorize a nonbypassable PTR should be disregarded.

⁴ AEP Ohio incorporates its arguments set forth in section II.A.1, *supra*, as if fully restated herein.

2. The record supports the Commission's conclusion that R.C. 4928.143(B)(2)(d) authorizes the PTR.

The Commission correctly determined in its January 30 Entry on Rehearing that R.C. 4928.143(B)(2)(d) authorizes the PTR. January 30 Entry on Rehearing at 60. As the Commission explained:

The termination of the Pool Agreement is a prerequisite to AEP-Ohio's transition to full structural corporate separation. With AEP-Ohio's move to full structural corporate separation and CRES providers securing capacity in the market, the number of service offers for SSO customers and shopping customers will likely increase and improve. On that basis, termination of the Pool Agreement is key to the establishment of effective competition and authorized under the terms of Section 4928.143(B)(2)(d), Revised Code.

Id. That explanation is consistent with the Commission's previous conclusion that the PTR "serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers" and to make the full transition to market for all SSO customers. *See* August 8 Order at 49.

IEU asserts that the Commission has not made the required findings to support authorization of the PTR under 4928.143(B)(2)(d) because, IEU contends, an increase in service offers is not equivalent to certain or stable service. (IEU App. for Rehearing at 15.) That assertion, however, is misplaced. The termination of the Pool and increase in service offers likely *will* promote price stability, through the development of a more robust and transparent retail electric service market. Moreover, as AEP Ohio has previously explained, however, the nature of the Pool has historically been to *stabilize rates for Ohio ratepayers*. (*See* AEP Ohio September 17, 2012 Mem. Contra Intervenor's Applications for Rehearing at 65-66; Joint Reply Br. of Signatory Parties at 55 (Nov. 18, 2011).) Thus, the PTR qualifies as a charge that "would have the effect of stabilizing or providing certainty regarding retail electric service" under R.C.

4928.143(B)(2)(d). That the Commission's findings were not as explicit as IEU would like does not render them inadequate. The Commission properly determined that R.C. 4928.143(B)(2)(d) authorizes the PTR and adequately explained the basis for its decision. It should decline to grant IEU's request for rehearing as to that basis.

3. The Commission should disregard IEU's repetitive contention that approval of the PTR violates R.C. 4928.02(H) or R.C. 4928.17.

IEU's third argument regarding the PTR is that it violates R.C. 4928.02(H) and R.C. 4928.17 (*see* IEU App. for Rehearing at 16-18.) Like many of its other claims, however, IEU has already made this argument, and the Commission has already considered and rejected it. (*See* IEU Sept 7, 2012 App. for Rehearing at 62-65; January 30 Entry on Rehearing at 57.) The Commission should decline to consider the argument again on rehearing.

C. 12 Percent Rate Cap Deferrals

Finally, IEU criticizes the Commission's January 30, 2013, Entry on Rehearing's treatment of issues arising from the Opinion and Order's directive to implement a 12 percent rate cap and defer for future recovery amounts in excess of the rate cap. (IEU App. for Rehearing at 18-22.) In particular, IEU argues that the Entry on Rehearing fails to identify the incurred costs that would be subject to deferral pursuant to the rate cap, and it also fails to identify the carrying charge rate for any deferrals that result from the rate cap. IEU contends that a reasonable level for the carrying charge rate should be "below either AEP-Ohio's long or short-term cost of debt." (*Id.* at 22.)

IEU's recommendation that the carrying cost rate should be set at a level below either the Company's long or short-term cost of debt should be rejected. The carrying cost rate should be set at the weighted average cost of capital, as was done for the deferrals established in *ESP I*. As the Commission found with respect to the Company's Phase In Recovery Rider:

AEP-Ohio should be authorized to collect carrying charges on the deferral balance based on the WACC rate, but only until such time as the recovery period begins. Thereafter, AEP-Ohio should be authorized to collect carrying charges at its long-term cost of debt rate. * * * Once collection begins, the risk of non-collection is significantly reduced and, as such, it is more appropriate to use the long-term cost of debt rate, which is consistent with sound regulatory practice and longstanding Commission precedent.

August 1, 2012 Finding and Order (Case Nos. 11-4920-EL-RDR et al.) at 18. The same regulatory principles should be applied here such that any deferrals under the 12% cap would accrue a WACC carrying charge during the period of deferral and a lower debt rate charge during the recovery period. Alternatively, if the Commission establishes a short-term recovery mechanism for any deferrals under the 12% cap, it could perhaps be appropriate to use a lower carrying charge; to date, however, that mechanism has not been established.

III. CONCLUSION

For the foregoing reasons, the Commission should deny or ignore IEU's and OCC's applications for rehearing of the January 30, 2013 Entry on Rehearing to the extent set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Memorandum Contra of Ohio Power Company to Industrial Energy Users – Ohio's and The Office of the Ohio Consumers' Counsel's March 1, 2013 Applications for Rehearing* was served by electronic mail upon counsel for all other parties of record in this case on this 11th day of March, 2013.

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Summary: Memorandum Contra electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company