

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment)	Case No. 10-268-EL-FAC
Clauses for Columbus Southern Power)	Case No. 10-269-EL-FAC
Company and Ohio Power Company and)	
Related Matters for 2010.)	
In the Matter of the Application the Fuel)	
Adjustment Clauses for Columbus Southern)	Case No. 11-281-EL-FAC
Power Company and Ohio Power Company)	
and Related Matters.)	

**REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO
PUBLIC VERSION**

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I. INTRODUCTION

The Supreme Court of Ohio ("Court") has stated that "[f]uel adjustment clauses *are not and may not be permitted to become a carte-blanche authorization to an electric utility to pass through to its tariff customers expenses*"¹ As demonstrated by Industrial Energy Users-Ohio's ("IEU-Ohio") Post-Hearing Brief ("Brief"), Ohio Power Company ("OPCo") and Columbus Southern Power Company ("CSP") (collectively, "AEP-Ohio") have ignored the Court's directive and flowed excessive and unreasonable costs through the fuel adjustment clause ("FAC") in 2010 and 2011. Additionally, IEU-Ohio's Brief urged the Public Utilities Commission of Ohio ("Commission") to provide customers with a remedy for the excessive fuel costs that AEP-Ohio flowed through the FAC during 2009—half a decade is long enough to wait for a remedy for these excessive and unlawful charges.

As outlined below, IEU-Ohio's Reply Brief urges the Commission to:

¹ *Ohio Power Co. v. Pub. Util. Comm.*, 54 Ohio St.2d 342, 344 (1978) (emphasis added).
{C42610: }

- At a minimum, adopt the Commission Staff's ("Staff") recommendation that the Commission should direct the next auditor to review and provide a recommendation regarding AEP-Ohio's double recovery of purchased power costs related to the Ohio Valley Electric Corporation ("OVEC") and Lawrenceburg Generating Station ("Lawrenceburg"). Based on the record in these proceedings, however, IEU-Ohio recommends that the Commission determine that AEP-Ohio double recovered more than \$220 million in purchased power costs through the FAC;
- Direct AEP-Ohio to modify the carrying charge methodology that is applied to the balance that was deferred in AEP-Ohio's first electric security plan ("ESP") to include an adjustment for the benefit of accumulated deferred income taxes ("ADIT");
- Disallow AEP-Ohio's inclusion in the FAC of excessive and imprudent accelerated depreciation costs and other related closure costs for the Conesville Coal Preparation Plant ("CCPP") that are not related to the cost of fuel flowed through the FAC;
- Ensure that AEP-Ohio is required to provide customers the benefit of the future discount on coal that customers funded through excessive charges in 2009;
- Direct the next auditor to review and provide a recommendation whether AEP-Ohio correctly calculated the credit the Commission ordered AEP-Ohio to provide to customers in its January 23, 2012 Opinion and Order and as clarified in the Commission's April 11, 2012 Entry on Rehearing;
- Issue a request for proposals ("RFP") for an appraiser to value the reserves of coal (the "Coal Reserve") that AEP-Ohio received in return for raising the price of coal that customers paid in 2009.

To the extent that IEU-Ohio's Reply Brief does not address a position raised in these proceedings, IEU-Ohio's silence should not be taken as support or opposition to that position.

II. ARGUMENT

A. The Commission should disallow AEP-Ohio's double recovery of purchased power costs related to OVEC and Lawrenceburg through base generation rates and the FAC

Staff's Post-Hearing Brief ("Staff Brief") notes that it appears AEP-Ohio has double recovered purchased power costs associated with OVEC and Lawrenceburg,

stating: "[d]uring the course of the hearing it became apparent that there may be a double counting of a portion of capacity costs. The record reflects that the costs associated with two of the company's plants were used by the Commission in calculating the capacity charge that AEP Ohio is permitted to impose."² Staff, however, states that "[t]his situation creates a *possibility* that there is a double payment"³ and "the topic of capacity cost is highly complicated and the question requires close examination to reach a full understanding."⁴ Rather than urging the Commission to issue an order disallowing the double recovered amounts, Staff recommends that "the Commission should direct the next auditor to examine the collection of capacity charges to determine if there is a double collection and, if there is, to recommend a resolution."⁵

Staff's recommendation to address the double recovery in the next audit report is the bare minimum relief the Commission should order in these proceedings. If the Commission adopts Staff's recommendation, IEU-Ohio urges the Commission to issue a directive for the Auditor to address the 2010 and 2011 double recovery in AEP-Ohio's pending 2012 and 2013 FAC cases. The Commission has already directed the auditor of AEP-Ohio's 2012, 2013, and 2014 FAC to review whether AEP-Ohio double recovered its purchased power costs.⁶ The auditor will present a draft audit report to Staff on April 18, 2014 regarding, among other things, the double recovery that occurred during 2012 and 2013.⁷ IEU-Ohio urges the Commission to direct the auditor to also

² Staff Brief at 12.

³ *Id.* at 13.

⁴ *Id.*

⁵ *Id.*

⁶ *In the Matter of the Application of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 11-5906-EL-FAC, *et al.*, Entry at 3-4 (Dec. 4, 2013).

⁷ *Id.* at 2.

present its findings and recommendation regarding the 2010 and 2011 double recovery in the audit report that will be presented to Staff on April 18, 2014, or in a supplement to that report to be provided to Staff no later than June 18, 2014.

The delay suggested by Staff, however, is not warranted, because the double recovery that occurred in 2010 and 2011 is quite clear. AEP-Ohio's base generation rates in effect during 2010 and 2011 provided AEP-Ohio with compensation equivalent to \$355 per megawatt day.⁸ And, AEP-Ohio is fully compensated for its cost of capacity and purchased power—including Lawrenceburg and OVEC demand charges—by compensation of \$355 per megawatt day.⁹ Even though AEP-Ohio's 2010 and 2011 base generation rates fully compensated it for the Lawrenceburg and OVEC demand charges, AEP-Ohio recovered the same demand charges through the FAC in 2010 and 2011.¹⁰ Thus, there is no reason to delay providing customers a remedy for more than \$220 million in excessive purchased power-related charges included in the FAC.¹¹

B. The Commission should direct AEP-Ohio to accrue carrying charges on a deferred balance reduced for the effects of ADIT

The 2010 and 2011 Audit Reports recommended that the Commission revisit the methodology through which AEP-Ohio calculates carrying charges on the balance that was deferred in AEP-Ohio's first ESP. Otherwise, AEP-Ohio will recover overstated carrying costs on cost-free capital provided by ADIT.¹²

⁸ IEU-Ohio Ex. 10-12. See also *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 at 25 (Jul. 2, 2012). This case is hereinafter referred to as the "Capacity Case" and the Opinion and Order is hereinafter referred to as the "Capacity Case Order."

⁹ IEU-Ohio Ex. 7-9. See also Capacity Case Order at 24-36.

¹⁰ IEU-Ohio Ex. 1-6.

¹¹ *Id.*

¹² Staff Ex. 1A at 1-10, (May 26, 2011). See also *id.* at 7-81 to 7-84. Staff Ex. 2A at 1-8 to 1-10 (May 24, 2012). See *id.* at 7-97 to 7-102. See also IEU-Ohio Ex. 15 at 4-11.

In response to the Auditor's recommendation, AEP-Ohio argues that "[i]t is not the role of the Auditor to second guess the decisions previously made and seek to undo the actions taken, it is the role of the Auditor to determine if the actions taken by the Company follow the orders issued by the Commission"¹³ AEP-Ohio further claims that, through its prior orders, the "Commission has spoken and determined that the carrying charge should be applied at the WACC rate as proposed by the Company without an ADIT offset."¹⁴ AEP-Ohio claims that the Commission approved the carrying cost methodology in the ESP I Order¹⁵ and reaffirmed its approval of the Phase-In Recovery Rider ("PIRR").¹⁶ Although AEP-Ohio notes that the latter approval has been appealed to the Court, AEP-Ohio claims (without providing case law) that IEU-Ohio is barred from raising this issue because IEU-Ohio did not appeal the ESP I Order's approval of the carrying cost methodology without an ADIT adjustment.¹⁷ AEP-Ohio's arguments are wrong.

AEP-Ohio's claim that the Auditor should not second guess the Commission is unsupported. The Entry establishing criteria for the Auditor's review contains no such language, and, in fact, the Entry states that "[p]lease note that this audit program establishes minimum criteria for the audit review. It should not be used to the exclusion

¹³ AEP-Ohio Brief at 9.

¹⁴ *Id.*

¹⁵ *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.*, Opinion and Order (Mar. 18, 2009) (hereinafter referred to as "ESP I" and the Opinion and Order is referred to as the, "ESP I Order").

¹⁶ AEP-Ohio Brief at 10-13.

¹⁷ *Id.* at 12.

of the auditor's initiative, imagination, and thoroughness in performing the audit."¹⁸ Thus, the Auditor is directed to make any recommendation that it finds appropriate.

Moreover, the Court has already upheld a modification of the terms of the phase-in that the deferred balance stems from.¹⁹ IEU-Ohio appealed the Commission's determination to modify the phase-in to allow AEP-Ohio to collect the economic development rider outside of the bill limits established in the ESP I Order. The Court denied IEU-Ohio's appeal, stating that the Commission did not rule out further modifications of the phase-in and the Commission may prospectively modify earlier orders:

[T]he order below did not violate the earlier, electric-security-plan order. It is true, as IEU argues, that the earlier order did not exempt the rider from the rate-increase limits. ***But the commission did not rule out further exemptions, and as a general rule, the commission has discretion to revisit earlier regulatory decisions and modify them prospectively.***²⁰

The 2010 and 2011 Audit Reports have recommended that the Commission revisit the carrying charge methodology because it over-compensates AEP-Ohio for the delayed revenue collection caused by the phase-in. Moreover, the Auditor's recommendation is consistent with longstanding Commission and Court precedent.²¹

¹⁸ *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.*, Entry, Public Utilities Commission of Ohio Request for Proposal No. U09-FPP-2 at 3 (Nov. 18, 2009).

¹⁹ *In re Columbus Southern Power Company*, 129 Ohio St.3d 568, 569-570 (2011) (hereinafter "EDR Case").

²⁰ *Id.* at 569 (emphasis added).

²¹ *Cleveland Electric v. Pub. Util. Comm'n*, 12 Ohio St.3d 320, 323 (1984) (holding that "the opinion and order is not only supported by the record, but it also remains consistent with the commission's policy regarding the pass-through of tax benefits to either present or future customers, depending upon the circumstances presented."); *Ohio Bell Tel. v. Pub. Util. Comm.*, 68 Ohio St.2d 193, 194 (1981); *Cincinnati Gas and Electric v. Pub. Util. Comm'n*, 173 Ohio St. 473, 473-476 (1962); see also *Cincinnati v. Pub. Util. Comm'n*, 161 Ohio St. 395, 405-06 (1954); *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.*, Opinion and Order at 47 (Aug. 8, 2012) (hereinafter "ESP II").

Because the carrying cost methodology over compensates AEP-Ohio at the expense of customers and violates regulatory practices and precedent, there is sufficient justification to direct AEP-Ohio to accrue carrying charges with an adjustment for ADIT. The Commission should direct AEP-Ohio to make the adjustment beginning on January 1, 2010, which is the start of the audit period under review.

As AEP-Ohio notes, the carrying cost methodology is currently on appeal to the Court. Although IEU-Ohio urges the Commission to direct AEP-Ohio to adjust the carrying cost methodology in these proceedings, at a minimum, if IEU-Ohio prevails in its appeal, the Commission should direct AEP-Ohio to accrue carrying charges with an ADIT adjustment from January 1, 2010 forward.

C. The Commission should disallow [REDACTED] related to increased depreciation costs and other related closure costs for the CCPP

In the 2010 Audit Report, Energy Ventures Analysis ("EVA") recommended that AEP-Ohio consider selling the CCPP to minimize costs.²² Rather than selling the uneconomic CCPP, the 2011 Audit Report noted that AEP-Ohio included an additional [REDACTED] in the 2011 FAC related to accelerated depreciation and other related closure costs.

In the 2011 Audit Report, EVA recommended that AEP-Ohio "determine and assign a salvage value to the CCPP for purposes of depreciation calculations" and that "should AEP Ohio sell the CCPP, that the proceeds from the sale should be credited against the" deferred balance.²³ In its Initial Brief, AEP-Ohio indicated that it had completed the Auditor's recommendation to determine and assign a salvage value to

²² Staff Ex. 1A at 4-4, 4-5; Staff Ex. 2A at 7-100. EVA also made this recommendation in the 2009 Audit Report. Staff Ex. 1A at 4-4.

²³ Staff Ex. 2A at 7-705.

the CCPP (zero).²⁴ Staff also noted in its Initial Brief that AEP-Ohio had determined and assigned a salvage value for the CCPP (zero) and therefore the recommendation was complete.²⁵

AEP-Ohio also claims that it is premature to address crediting the proceeds from the sale of the CCPP against the FAC because the sale did not occur in 2010 or 2011.²⁶ AEP-Ohio also argued that it would be improper to require it to credit the proceeds from the sale of the CCPP against the FAC.²⁷ Staff agrees with AEP-Ohio that this issue is not yet ripe, but did not address the merits of the Auditor's recommendation to credit the proceeds of the sale of the CCPP against the FAC.²⁸ OCC argues that the Commission should order AEP-Ohio to credit the proceeds of the sale of the CCPP against the FAC and argues that the "terms of the sale or disposition of the CCPP should be reviewed in the next audit to ensure that AEP-Ohio's customers receive the full and fair value of the CCPP"²⁹

The Commission should address the impact of closing the CCPP in this proceeding because it unlawfully overstated the costs that AEP-Ohio charged to customers. As discussed further below, the increased depreciation and other related closing costs are not properly includable in the FAC. Additionally, the Commission should disallow the costs because they were not prudently incurred. Accordingly, the Commission should direct AEP-Ohio to make an adjustment to the FAC rates for the CSP rate zone to remove the improper CCPP costs.

²⁴ AEP-Ohio Brief at 5.

²⁵ Staff Brief at 3.

²⁶ AEP-Ohio Brief at 22.

²⁷ *Id.* at 22-23.

²⁸ Staff Brief at 12.

²⁹ Office of the Ohio Consumers' Counsel ("OCC") Post-Hearing Brief at 13-15.

AEP-Ohio has no legal basis on which to include the accelerated depreciation and other related closing costs in the FAC. R.C. 4928.143(B)(2)(a) provides that AEP-Ohio's ESP (i.e. the FAC) may include:

Automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity, and including purchased power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes.

The accelerated depreciation and other related closing costs are not a cost to "generate the electricity supplied" to standard service offer ("SSO") customers. Rather, they are charges that AEP-Ohio assigned to the FAC to ensure that its investment in the CCPP is not stranded and to ensure that it does not incur additional costs related to the closure of the CCPP. It is not appropriate or lawful for AEP-Ohio to transfer the economic loss of closing the CCPP to customers. Therefore, the accelerated depreciation and closure costs were not properly included in AEP-Ohio's FAC.³⁰

In an analogous situation, the Commission has confirmed that AEP-Ohio may not recover generation plant related closing costs from its customers.³¹ In AEP-Ohio's proceeding related to the early closure of Unit 5 at the Philip Sporn generating facility, AEP-Ohio sought authorization to recover "accelerated depreciation and other net early closure costs."³² The Commission rejected AEP-Ohio's application, concluding that the Commission is generally prohibited from regulating competitive retail electric generation services and is specifically without authority to authorize the recovery of closure costs

³⁰ R.C. 4928.143(B)(2)(a).

³¹ *In the Matter of the Application of Ohio Power Company for Approval of the Shutdown of Unit 5 of the Philip Sporn Generating Station and to Establish a Plant Shutdown Rider*, Case No. 10-1454-EL-RDR, Finding and Order at 17-19 (Jan. 11, 2012) (hereinafter "Sporn Order").

³² *Id.* at 17.

associated with generation plant under any provision of Section 4928.143, Revised Code.³³

Further, the accelerated depreciation and other related closing costs should not have been included in the 2011 FAC rates because AEP-Ohio imprudently determined to continue to operate the CCPP in 2011.³⁴ In the 2010 Audit Report, the Auditor noted that it had previously recommended that AEP-Ohio determine “whether there is an economic justification for continuing to operate the Conesville Coal Preparation Plant given the renegotiation of the [REDACTED] coal to washed coal combined with a [REDACTED] in overall Conesville coal demand.”³⁵ In the 2010 Audit Report, the Auditor again recommended that AEP-Ohio should consider selling the CCPP in order to minimize costs.³⁶ AEP-Ohio also indicated to the Auditor that it had not taken any action in 2011 to sell the CCPP.³⁷ Finally, in the 2011 Audit Report, the Auditor noted that the increase in CCPP related costs in 2011 could have been avoided if AEP-Ohio had prudently sold the CCPP plant, as the Auditor had previously recommended.³⁸ As the Auditor noted, AEP-Ohio had failed to take a proactive approach with selling the CCPP: “the Company was not proactive at all waiting until 2012 to start marketing the plant after it had extended the contract with [its coal supplier] leaving no open position.”³⁹ Because AEP-Ohio imprudently failed to reduce its CCPP related cost of coal, AEP-Ohio’s 2011 FAC rates were overstated. Accordingly, the Commission

³³ *Id.* at 17-18 (“We cannot agree, however, that any provision of Section 4928.143, Revised Code, authorizes recovery of the closure costs for Sporn Unit 5 . . .”).

³⁴ Staff Ex. 2A at 4-2, 4-3.

³⁵ Staff Ex. 1A at 4-4.

³⁶ *Id.* at 4-5; Staff Ex. 2A at 7-100.

³⁷ Staff Ex. 2A at 7-104.

³⁸ Staff Ex. 2A at 4-3.

³⁹ *Id.* at 4-2.

should direct AEP-Ohio to make a reconciliation adjustment to its FAC in the amount of

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D. The Commission should ensure that customers receive the customer-funded future below-market benefits that will accrue to AEP-Ohio after the FAC expires

As the Commission noted in the FAC Order,⁴⁰ AEP-Ohio agreed to pay one of its coal suppliers an increase in the base price for a certain tonnage of coal during 2009 and received an option to acquire coal at a discount off the market price per ton for two three-year periods beginning in 2013 (the "Contract Support Agreement").⁴¹ The increased costs were passed on to customers in 2009, but the benefits will be realized from 2013 through 2018.⁴² IEU-Ohio's Brief urged the Commission to establish a mechanism to ensure that customers realize the benefits they funded in 2009 through FAC charges.⁴³

AEP-Ohio's Brief argues that the Commission should not address issues related to the future customer-funded discount because those issues are outside this audit period.⁴⁴ AEP-Ohio is wrong for several reasons.

Beginning on January 1, 2015, the Commission has ordered AEP-Ohio to provide energy to the SSO through an auction process for the remaining five months of AEP-Ohio's current ESP.⁴⁵ Thereafter, AEP-Ohio has indicated that it will procure

⁴⁰ *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 13 (Jan. 23, 2012). This case is hereinafter referred to as the "2009 FAC Case" and the Opinion and Order is hereinafter referred to as the "FAC Order".

⁴¹ 2009 FAC Case, FAC Order at 9, 14 (Jan. 23, 2012).

⁴² *Id.*

⁴³ See IEU-Ohio Ex. 15 at 13-14.

⁴⁴ AEP-Ohio Brief at 23-24.

⁴⁵ *ESP II*, Opinion and Order at 39-40 (Aug. 8, 2012).

energy and capacity for the SSO through an auction process. Once AEP-Ohio procures 100 percent of its energy needed to serve the SSO load through an auction on January 1, 2015, AEP-Ohio's fuel costs—and any below market discount that is available to AEP-Ohio—will not directly impact SSO prices. Thus, a portion of the customer-funded discount will accrue at a time when customers will not receive a benefit. Because customers will not realize the benefit of the renegotiated discount, the Commission must, at some point, establish a mechanism to assure that customers realize the benefit of the customer-funded discount that will accrue to AEP-Ohio outside of any audit period. Equity favors acting now to ensure that the customers that paid higher FAC charges in 2009 receive the benefit of the discount that will accrue to AEP-Ohio after it no longer allocates fuel costs to customers.⁴⁶

E. The Commission should direct the next auditor to review and provide a recommendation as to whether AEP-Ohio correctly calculated the Commission-ordered credit

The FAC Order initially directed AEP-Ohio to credit \$71 million to the balance that was deferred in AEP-Ohio's first ESP. On rehearing, the Commission directed AEP-Ohio to credit the jurisdictional portion of the \$71 million to the deferred balance. Financial Audit Recommendation 7 of the 2011 Audit Report recommends that "AEP Ohio's crediting of those clarified amounts against OPCO's FAC under-recovery should be reviewed in the next audit."⁴⁷ AEP-Ohio claims that "[a]s supported by the testimony of Company witness Dooley, the appropriate credits have been booked in accordance

⁴⁶ As of December 31, 2009, less than 1 percent of CSP's load had shopped for electricity <http://www.puco.ohio.gov/emplibrary/files/util/MktMonitoringElecCustSwitchRates/SWITCH%20RATES%20SALES/2009/4Q2009.pdf>. As of September 30, 2013, more than half of CSP's customers had shopped for electricity. <http://www.puco.ohio.gov/emplibrary/files/util/MktMonitoringElecCustSwitchRates/SWITCH%20RATES%20SALES/2013/3Q2013.pdf>.

⁴⁷ Staff Ex. 2A at 1-10 (May 24, 2012).

with Commission Orders and will be available for review by the Auditor.”⁴⁸ Based upon Mr. Dooley’s testimony, AEP-Ohio claims “this recommendation should be considered complete.”⁴⁹ The recommendation is not complete.

The Auditor recommended that the *next* auditor review the credit AEP-Ohio provided to customers and determine whether it complied with the Commission’s order.⁵⁰ The Auditor did not testify in the hearing that he had reviewed the credit and the 2010 and 2011 Audit Reports did not review the calculation of the credit. Thus, the recommendation cannot be considered complete in these proceedings.

F. The Commission should promptly appraise the Coal Reserve

IEU-Ohio’s Brief urged the Commission to issue a RFP for the purpose of selecting and hiring an auditor to examine the value of the Coal Reserve, as required by the FAC Order.⁵¹ AEP-Ohio suggests that “[p]erhaps the Commission is not confident that the current market supports a beneficial opportunity for sale or perhaps the Commission is awaiting clarification by the Court on the myriad of issues in a case set for oral argument early in 2014.”⁵² AEP-Ohio’s arguments do not provide a basis for delaying the RFP.

AEP-Ohio incorrectly assumes that the Commission will establish the value of the Coal Reserve based upon the current market value. The Commission could establish the value of the Coal Reserve based upon the higher of the current market value or the value of the Coal Reserve at the time AEP-Ohio received it in 2008. AEP-Ohio made a

⁴⁸ AEP-Ohio Brief at 20.

⁴⁹ AEP-Ohio Brief at 20.

⁵⁰ Staff Ex. 2A at 1-10 (May 24, 2012).

⁵¹ FAC Order at 12 (Jan. 23, 2012).

⁵² AEP-Ohio Brief at 23.

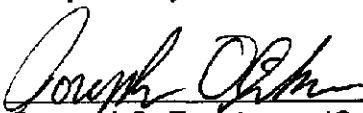
conscious decision in 2008 to not sell the Coal Reserve, although coal prices were at record highs.⁵³ Customers must not be harmed by AEP-Ohio's decision.

Moreover, the Commission should not wait until the Court issues a determination regarding the lawfulness of the FAC Order. Commission orders are effective upon journalization, unless stayed.⁵⁴ And AEP-Ohio did not request a stay of the Commission's order. Thus, there is no basis to delay the RFP.

III. CONCLUSION

For the reasons stated herein, IEU-Ohio urges the Commission to correct AEP-Ohio's double recovery of purchased power costs, with carrying charges. Moreover, IEU-Ohio urges the Commission to direct AEP-Ohio to accrue carrying charges on the deferred balance reduced for the effect of ADIT. Finally, IEU-Ohio urges the Commission to address unresolved issues from the audit of the 2009 FAC case.

Respectfully submitted,



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⁵³ 2009 FAC Case, FAC Order at 4.

⁵⁴ R.C. 4903.15; 2009 FAC Case, Entry on Rehearing at 10 (Apr. 11, 2012).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief of Industrial Energy Users-Ohio* was served upon the following parties of record this 21st day of January 2014, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.


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