

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the)
Fuel Adjustment Clauses for Columbus) Case No. 11-5906-EL-FAC
Southern Power Company and Ohio)
Power Company and Related Matters.)

In the Matter of the Fuel Adjustment)
Clauses for Columbus Southern Power) Case No. 12-3133-EL-FAC
Company and Ohio Power Company.)

In the Matter of the Fuel Adjustment) Case No. 13-572-EL-FAC
Clauses for Ohio Power Company.)

In the Matter of the Fuel Adjustment) Case No. 13-1286-EL-FAC
Clauses for Ohio Power Company.)

In the Matter of the Fuel Adjustment) Case No. 13-1892-EL-FAC
Clauses for Ohio Power Company.)

ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company)¹ is an electric utility as defined by R.C. 4928.01(A)(11) and an electric distribution utility as defined by R.C. 4928.01(A)(6) and, as such, is subject to the jurisdiction of this Commission.
- (2) In Case No. 11-346-EL-SSO, et al., the Commission modified and approved, pursuant to R.C. 4928.143, AEP Ohio's application for an electric security plan (ESP), including a fuel adjustment clause (FAC) mechanism under which the Company is intended to recover prudently incurred fuel and fuel-related costs. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO, et al. (ESP Case), Opinion and Order (Aug. 8, 2012) at 18. In addition, a new alternative energy rider was established to

¹ On March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company. *In re Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

enable AEP Ohio to recover alternative energy costs, which were previously recovered through the FAC. Annual audits are to be performed of AEP Ohio's fuel costs, fuel management practices, and alternative energy costs.

- (3) By Entry issued on December 4, 2013, the Commission selected Energy Ventures Analysis, Inc. (EVA) to perform the annual audit of AEP Ohio's fuel and alternative energy costs for the audit periods of 2012, 2013, and 2014 (FAC Audit Entry). Additionally, the Commission noted that intervenors in a proceeding related to AEP Ohio's proposed competitive bid procurement (CBP) process raised concerns regarding the Company's possible double recovery of certain capacity-related costs. *In re Ohio Power Company*, Case No. 12-3254-EL-UNC (*CBP Case*), Opinion and Order (Nov. 13, 2013) at 15, 16. The Commission, therefore, directed EVA to review and investigate the double-recovery allegations as part of its audit in the above-captioned proceedings and to recommend appropriate action based on EVA's review.
- (4) R.C. 4903.10 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.
- (5) On January 3, 2014, AEP Ohio filed an application for rehearing of the FAC Audit Entry. Industrial Energy Users-Ohio (IEU-Ohio) and the Ohio Consumers' Counsel (OCC) filed a joint memorandum contra AEP Ohio's application for rehearing on January 13, 2014.
- (6) By Entry on Rehearing issued on January 29, 2014, the Commission granted the application for rehearing filed by AEP Ohio for further consideration of the matters specified in the application for rehearing.
- (7) In its first ground for rehearing, AEP Ohio argues that it was unreasonable and unlawful for the FAC Audit Entry to direct EVA to review and investigate the double-recovery allegations raised in the *CBP Case* as part of the FAC audit. Initially, AEP Ohio asserts that the demand costs in question

have long been recovered through the FAC and that these proceedings are not the appropriate forum in which to address the double-recovery allegations. AEP Ohio urges the Commission to address the double-recovery allegations on rehearing in the *CBP Case* or in a separate docket. AEP Ohio also contends that it was unreasonable to incorporate in these proceedings broad allegations by general reference to the pleadings in the *CBP Case* and without any limitation on the scope of the inquiry. In particular, AEP Ohio argues that there is significant potential for unlawful retroactive ratemaking to occur, unless EVA is directed to review the issues on a prospective basis beginning in April 2014, which is the point at which the FAC is unbundled and the fixed cost rider (FCR) takes effect. Additionally, AEP Ohio maintains that the double-recovery allegations amount to a collateral attack on various Commission decisions approving the Company's base generation rates, as well as the decision establishing the Company's \$188.88/megawatt-day (MW-day) charge for capacity. *In re Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC (*Capacity Case*), Opinion and Order (July 2, 2012); Entry on Rehearing (Oct. 17, 2012). According to AEP Ohio, its base generation rates have not been cost-based since before 1999 and cannot, therefore, be found to enable the double recovery of any particular cost.

- (8) IEU-Ohio and OCC respond that AEP Ohio's apparent double recovery of certain capacity costs from customers through the FAC is indeed a FAC issue and, thus, the Commission correctly directed EVA to review the reasonableness of including these costs in the FAC. IEU-Ohio and OCC add that AEP Ohio offers no support for its claim that the double-recovery allegations should be resolved in the *CBP Case*. IEU-Ohio and OCC also note that the Commission has already determined that the *CBP Case* is not the appropriate forum in which to resolve the issue of double recovery. IEU-Ohio and OCC assert that AEP Ohio's argument regarding the prudence of the costs in question is irrelevant, as the Company is only entitled to recover such costs once from customers. Further, according to IEU-Ohio and OCC, a finding of imprudence is not a condition

precedent to making an adjustment to AEP Ohio's FAC on the basis of overstated costs. Next, IEU-Ohio and OCC claim that the audit does not constitute a collateral attack on prior Commission orders. Specifically, IEU-Ohio and OCC point out that an audit of the costs included in AEP Ohio's FAC will have no impact on the Company's base generation rates or the \$188.88/MW-day charge for capacity, because the Commission can adjust the Company's current or future FAC rates in the event that a double recovery through the FAC is established. Finally, IEU-Ohio and OCC urge the Commission to reject AEP Ohio's request to limit the scope of the audit. IEU-Ohio and OCC point out that AEP Ohio's argument regarding retroactive ratemaking is unsupported. IEU-Ohio and OCC add that prospective adjustments to a variable rate, such as AEP Ohio's FAC, in order to account for amounts that were unreasonably included in the rate do not constitute retroactive ratemaking. As a final point, IEU-Ohio and OCC maintain that the capacity costs in question were collected through the FAC during the audit periods covered by these proceedings and that AEP Ohio has not shown any reason to delay the period under review until the starting date of the FCR.

- (9) The Commission finds that AEP Ohio's first ground for rehearing lacks merit. In the *CBP Case*, we acknowledged the double-recovery allegations raised by the intervenors, but determined that the *CBP Case* was not the proper forum for resolution of the alleged double recovery. *CBP Case*, Opinion and Order (Nov. 13, 2013) at 16. Subsequently, in the FAC Audit Entry, the Commission reasonably directed that the double-recovery allegations raised in the *CBP Case* be reviewed and investigated in these FAC proceedings. The alleged double recovery partially stems from capacity costs that are currently recovered through AEP Ohio's FAC and are soon to be recovered, upon unbundling of the FAC, through the FCR. Therefore, the Commission does not agree that the alleged double recovery is not a FAC-related issue or is in any way not a proper subject for review in these FAC proceedings. Neither do we agree that the audit constitutes a collateral attack on prior Commission orders. In the *ESP Case*, the Commission determined that costs flowing through the FAC would be subject to adjustment as a result

of the annual audit and reconciliation. *ESP Case*, Opinion and Order (Aug. 8, 2012) at 18. As IEU-Ohio and OCC note, if a double recovery is established following the investigation, the FAC rates may be adjusted, consistent with our orders in the *ESP Case*, with no impact on the \$188.88/MW-day capacity charge or base generation rates. With respect to AEP Ohio's arguments regarding the scope of the audit, we note that the audit in these proceedings will cover the audit periods of 2012, 2013, and 2014 and, therefore, the review of the double-recovery allegations is not unlimited, as the Company contends. Because the FAC is subject to adjustment, consistent with our orders in the *ESP Case*, the Commission disagrees with AEP Ohio's contention that there is significant potential for retroactive ratemaking. Finally, AEP Ohio's remaining arguments, such as those claiming that the Company's FAC costs are prudently incurred and that its base generation rates are not cost-based, appear to concern the merits of the double-recovery allegations. If the investigation reveals that double recovery has occurred and adjustments are recommended, the Commission will, at that point, establish a process for AEP Ohio and intervenors to address the findings and recommendations in the audit report. Accordingly, AEP Ohio's first ground for rehearing should be denied.

- (10) In its second ground for rehearing, AEP Ohio contends that it was unreasonable and unlawful for the Commission to direct EVA, in effect, to audit its own consulting work. According to AEP Ohio, EVA cannot be an independent reviewer of the double-recovery allegations, given that EVA provided expert testimony on behalf of the Commission's Staff in the *Capacity Case*. AEP Ohio asserts that, in light of EVA's role as an advocate adverse to the Company in the *Capacity Case*, which the Company contends involved closely related subject matter, it is inappropriate to assign EVA the task of evaluating the double-recovery allegations. AEP Ohio contends that EVA, because of its prior role, cannot now maintain either the appearance of impartiality or actual impartiality on the issues to be reviewed in these proceedings. AEP Ohio adds that an audit of the double-recovery allegations by EVA in these proceedings would constitute a second review of EVA's financial and

management consulting work in the *Capacity Case*, given the intervenors' position in the *CBP Case* that the Company's \$188.88/MW-day charge for capacity should be lower to account for demand charges already recovered through the FAC. AEP Ohio requests that the Commission reject this theory of double recovery on rehearing or otherwise adjudicate the issues in another docket, in order to avoid the appearance of impropriety and conflict of interest that the Company believes would result if the Commission allows EVA to audit its own consulting work. AEP Ohio further requests that the Commission retain another auditor, if the Commission elects to consider the double-recovery allegations in these proceedings.

- (11) IEU-Ohio and OCC disagree that EVA will be required to audit its own analysis from the *Capacity Case*. Specifically, IEU-Ohio and OCC contend that the audit will require EVA to determine whether AEP Ohio is compensated elsewhere for certain capacity costs that the Company collects through the FAC and will not require EVA to propose any changes to the \$188.88/MW-day charge for capacity or base generation rates. IEU-Ohio and OCC further contend that AEP Ohio failed to demonstrate that a conflict of interest or the appearance of a conflict of interest exists. IEU-Ohio and OCC believe that the Commission's selection of EVA to review the double-recovery allegations was lawful and reasonable.
- (12) Again, the Commission finds no error in directing that the double-recovery allegations be reviewed in these FAC proceedings. We disagree with AEP Ohio's contentions that EVA has essentially been directed to audit its own work in the *Capacity Case*. Nevertheless, pursuant to the Commission's recent Entry on Rehearing in the *CBP Case*, Staff has been directed to issue a supplemental request for proposal, solely with respect to the investigation of the double-recovery allegations, in order to avoid even the appearance of a conflict of interest. *CBP Case*, Entry on Rehearing (Jan. 22, 2014) at 10. We find that AEP Ohio's remaining arguments lack merit and should be rejected. AEP Ohio's second ground for rehearing should, therefore, be denied.

It is, therefore,

ORDERED, That AEP Ohio's application for rehearing be denied. It is, further,

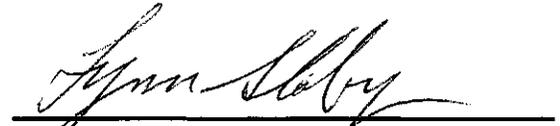
ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

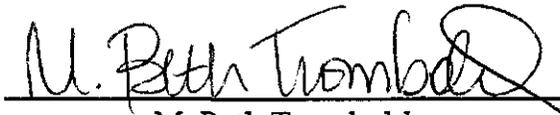
Todd A. Snitchler, Chairman



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SJP/sc

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Secretary