

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Application of	)	
Columbus Southern Power Company For	)	Case No. 08-917-EL-SSO
Approval of its Electric Security Plan	)	
Including Related Accounting Authority;	)	
an Amendment to its Corporate	)	
Separation Plan; and the Sale or Transfer	)	
of Certain Generating Assets.	)	

and

In the Matter of the Application of	)	
Ohio Power Company for Approval of	)	Case No. 08-918-EL-SSO
its Electric Security Plan Including	)	
Related Accounting Authority; and an	)	
Amendment to its Corporate Separation	)	
Plan.	)	

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**MEMORANDUM CONTRA AEP OHIO'S REQUESTS FOR WAIVERS FROM  
CERTAIN STANDARD SERVICE OFFER FILING REQUIREMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

On May 1, 2008, Governor Strickland signed Amended Substitute Senate Bill No. 221 ("S.B. 221") which, among other things, altered the way that investor-owned electric utilities operating in Ohio structure their rates. On July 31, 2008, Columbus Southern Power Company ("CSP") and Ohio Power Company ("Ohio Power") (collectively, "AEP Ohio")<sup>1</sup> filed with the Public Utilities Commission of Ohio ("Commission" or "PUCO")

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<sup>1</sup> CSP and Ohio Power are subsidiary electric utility operating companies of American Electric Power Company, Inc. ("AEP"), and conduct their combined business in Ohio as "AEP Ohio." The waiver request did not include numbered pages. Therefore, OCC will cite to specific pages of the waiver request thusly: "Waiver Request at [x]."

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the above-referenced applications for approval of a Standard Service Offer (“SSO”) that includes an electric security plan (“ESP”).<sup>2</sup>

Concomitantly with its applications, AEP Ohio filed requests for waivers of two rules proposed by the PUCO as part of its implementation of S.B. 221. AEP Ohio seeks a waiver of the proposed requirement that electric utilities file pro forma financial projections of the effect of the ESP’s implementation upon the electric utility’s financials for the duration of the ESP.<sup>3</sup> AEP Ohio also would like to be excused from the proposed obligation to file a summary and detailed description of the costs for which it seeks automatic recovery pursuant to R.C. 4928.143(B)(2)(a).<sup>4</sup> AEP Ohio also states that if “the Commission determines to include such requirements in its final rules but does not grant the Companies’ request for waivers, the Companies request that they be provided a reasonable opportunity to supplement their application.”<sup>5</sup>

The Office of the Ohio Consumers’ Counsel (“OCC”), an intervenor in these proceedings on behalf of residential utility consumers,<sup>6</sup> submits this Memorandum Contra AEP Ohio’s waiver requests.<sup>7</sup> As discussed herein, AEP Ohio has not provided good cause for any of the waiver requests. The Commission should deny the waiver requests and require AEP Ohio to supplement its applications with the necessary information by August 29, 2008.

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<sup>2</sup> AEP Ohio filed the applications in response to the PUCO’s July 2, 2008 Entry in Case No. 08-877-EL-ORD.

<sup>3</sup> Proposed Ohio Adm. Code 4901:1-35-03, Appendix B, subpart (B) (“Rule (B)”).

<sup>4</sup> Proposed Ohio Adm. Code 4901:1-35-03, Appendix B, Specific Information (A)(1) (“Rule (A)(1)”).

<sup>5</sup> Waiver Request at [4].

<sup>6</sup> OCC filed a motion to intervene in each of these proceedings on August 4, 2008. OCC has legislative authority to represent the residential utility consumers of Ohio pursuant to Chapter 4911 of the Ohio Revised Code.

<sup>7</sup> OCC’s Memorandum Contra is filed pursuant to Ohio Adm. Code 4901-1-12.

## **II. STANDARD OF REVIEW**

Proposed Ohio Adm. Code 4901:1-35-02 provides that “[t]he commission may waive any requirement of Chapter 4935:1-35 for good cause shown.” The burden is on AEP Ohio to show that good cause exists for waiver of the proposed rules.<sup>8</sup> Although the Commission has not set forth specific criteria for a showing of “good cause” in conjunction with waiver requests, the Commission has found that there was not good cause for a waiver of a filing requirement where the Commission needs the information that is required to be filed in order to “effectively and efficiently review the Applicant’s base rate application.”<sup>9</sup>

## **III. AEP OHIO HAS NOT SHOWN GOOD CAUSE FOR A WAIVER OF THE PROPOSED RULES.**

### **A. The Commission Needs the Information Regarding the Prospective Review of the Financial Impact of Three-Year Electric Security Plans in Order to Effectively and Efficiently Determine AEP Ohio’s Compliance with the Policy Stated in R.C. 4928.02**

AEP Ohio requests a waiver of proposed Rule (B) relieving it of the requirement to file financial pro forma projections showing the effect of the proposed ESP on the electric utility for the duration of the ESP.

AEP Ohio asserts that R.C. 4928.143(E) permits prospective review of the effect of an ESP on the company’s earnings only if the ESP is longer than three years (exclusive

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<sup>8</sup> See, e.g., *In the Matter of the Application of NOW Communications, Inc. to Offer Resold Local Exchange and Intrastate Interexchange Services*, Case No. 98-1466-TP-ACE, *et al*, Opinion and Order (November 2, 2000) at 58.

<sup>9</sup> *In the Matter of the Application of Aqua Ohio, Inc., for Authority to Increase Its Rates and Charges in The Lake Erie Division*, Case No. 07-564-WW-AIR, Entry (June 6, 2007) at 4.

of phase-ins or deferrals).<sup>10</sup> AEP Ohio's ESP is a three-year plan and AEP Ohio claims there is no statutory basis for a prospective review of the ESP's impact on the company's earnings during any portion of AEP Ohio's ESP -- which it claims is the review that Rule B facilitates.<sup>11</sup>

It should be noted that R.C. 4928.143(E) does not *prohibit* the Commission from prospectively reviewing the impact of a three-year ESP on the company's earnings. In fact the language with respect to reviewing the return on common equity does not include an explicit time frame limiting review in the manner set forth by AEP. Nevertheless, *assuming arguendo*, prospective review of the financial impact of an ESP of three years or less, with information under proposed Rule B, is important in assuring that ESP implementation, this would further the policy of R.C. 4928.02(A) to "ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory and reasonably priced retail electric service...." In addition, prospective review of shorter ESPs helps to "ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power...."<sup>12</sup> It is hard to imagine that in enacting S. B. 221 the legislature intended to tie the PUCO's hands so that it could not evaluate how the ESP would affect AEP Ohio. In the absence of such a prohibition, the PUCO can request and evaluate whatever information it deems necessary to carry out the intent of the statutes.

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<sup>10</sup> Waiver Request at [2]-[3].

<sup>11</sup> *Id.* at [3].

<sup>12</sup> R.C. 4928.02(I).

The Commission should deny AEP Ohio's request for waiver of Rule (B). and require AEP Ohio to file the pro forma financial projections of the effect of the ESPs implementation upon AEP Ohio for the duration of the ESP.

**B. The Commission Needs the Information Required by Rule (A)(1) in Order to Effectively and Efficiently Review AEP Ohio's Applications.**

Rule (A)(1) applies to ESPs that have automatic recovery of fuel purchased power and other costs. In such instances, the rule requires that ESP applications include "[t]he type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description shall include the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost."

AEP Ohio's ESPs include automatic recovery of more than \$860 million of fuel costs, environmental costs, renewables and fuel purchased power (including purchased power related to economic development efforts.) AEP Ohio's ESPs also call for deferral of \$650 million associated with fuel adjustment costs.

In its waiver requests, AEP Ohio acknowledges that this type of information is available and will be part of periodic fuel adjustment clause hearings (i.e., annual audits) in the future. For this reason AEP Ohio claims it is not necessary to provide this information to the Commission with its applications.<sup>13</sup> AEP Ohio however, is wrong. The proposed rules suggest that audits should occur quarterly<sup>14</sup> -- but they are unlikely to occur during the next several months when the ESP is being decided. For the

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<sup>13</sup> Waiver Request at [3].

<sup>14</sup> See proposed Ohio Adm. Code 4901:1-35-09(B).

Commission to effectively and efficiently review AEP Ohio's applications and make a reasoned and informed decision, the Rule (A)(1) information must be provided now. This is the only way to ensure that costs are prudently incurred, as required by R.C. 4928.143(C)(1), and that the ESP is reasonable when adopted by the Commission.

AEP Ohio has failed to demonstrate good cause necessary for waiving a filing requirement of the Commission. AEP Ohio's preference to file the information in the future in another proceeding does not constitute good cause. The Commission has determined that good cause for a waiver of a filing requirement is absent where the Commission needs the information that is required to be filed in order to "effectively and efficiently review the Applicant's base rate application."<sup>15</sup> Such is the case here.

R.C. 4928.143(C)(1) places burden of proof on the ESP applicant – in this case, AEP Ohio – to show costs are prudently incurred. Without the information required by Rule (A)(1), the Commission cannot determine whether AEP Ohio has met its statutory burden. The Commission should deny AEP Ohio's requests for waiver of Rule (A)(1).

Moreover, given the sheer magnitude of the proposed increase, the public has a right to know and understand what they are being requested to pay for. This information is vital to answering that question and consumers are entitled to that information.

**C. The Commission Should Require AEP Ohio to Promptly Supplement its Application with the Information Required by Rules (A)(1) and (B).**

As noted above, the Commission should deny AEP Ohio's requests for waiver of Rules (A)(1) and (B). In the alternative to the waiver requests, AEP Ohio asked the Commission to provide CSP and Ohio Power "a reasonable opportunity to supplement

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<sup>15</sup> See footnote 9, *supra*.

their application.”<sup>16</sup> Given the “compressed time frames for filing and reviewing this first round of ESP applications,”<sup>17</sup> AEP Ohio should be required to promptly supplement its applications and if, as a result of this supplementation, parties need additional time to review the data that should be granted as well. Another alternative under the law is for the Commission to reject the ESP filing and require the Company to refile an ESP application that is in compliance with Commission requirements.

The procedural schedule established for these cases requires intervenor testimony to be filed by October 17, 2008 and the hearing to begin on November 3, 2008.<sup>18</sup> Thus, time is of the essence.

Out of fairness to the intervenors in these proceedings, the Commission should require AEP Ohio to promptly conform its filing to the proposed rules, or the Commission should grant an extension of time to all parties until the information is available either in these applications or in the quarterly fuel audits. The Commission should require that AEP Ohio file the information required by Rules (A)(1) and (B) by August 29, 2008.

#### **IV. CONCLUSION**

AEP Ohio attempts to obtain waivers of the Commission’s ESP filing requirements based upon the latitude provided in the Commission in Rule 4901:1-35-03(C). This rule allows the Commission to accept applications that are in substantial compliance of the final rules. But this is not the case AEP Ohio presents. AEP Ohio knows the filing requirements as set forth in the proposed rules and does not want to

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<sup>16</sup> Waiver Request at [4].

<sup>17</sup> Id. at [3]-[4].

<sup>18</sup> Entry (August 5, 2008) at 2.

satisfy them. This is in sharp contrast to the situation where an application is in substantial compliance with the proposed rules – as it should be – and then the PUCO adopts modified rules that render the application out of compliance. The information subject to the requested waivers is important to the Commission's determination of the applications and it should be filed promptly.

For all the reasons set forth herein, the Commission should deny AEP Ohio's requests for waiver of Rules (A)(1) and (B) and order AEP Ohio to file the information required by these rules by August 29, 2008.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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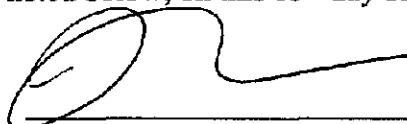
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra AEP Ohio's Requests for Waivers from Certain Standard Service Offer Filing Requirements was served via electronic service to the persons listed below, on this 15<sup>th</sup> day of August, 2008.



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