

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2008 AUG 28 PM 3:35

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; an )  
Amendment to its Corporate Separation )  
Plan; and the Sale or Transfer of Certain )  
Generation Assets. )

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

---

**JOINT MOTION FOR CONTINUANCE OF THE HEARING  
AND EXTENSIONS OF TIME  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, OHIO  
ENVIRONMENTAL COUNCIL,  
THE SIERRA CLUB OHIO CHAPTER AND  
OHIO PARTNERS FOR AFFORDABLE ENERGY**

---

The Office of the Ohio Consumers' Counsel ("OCC"), Ohio Environmental Council ("OEC"), The Sierra Club Ohio Chapter ("Sierra Club"), and Ohio Partners for Affordable Energy ("OPAE") (collectively "Movant"), on behalf of electric customers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "AEP" or "Companies") move the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant a sixty-day continuance of the hearing date in the above-captioned case, currently set for November 3, 2008. In addition, Movant moves the Commission for a similar, sixty-day extension of the discovery deadline in this case, currently set at October 21, 2008, and the deadline to file intervenor testimony, currently set at September 17, 2008. In the alternative, Movant requests the Commission to extend

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business  
Technician SM Date Processed 8/28/08

the discovery deadline, the time for filing intervenor testimony, and to continue the hearings for at least fifteen days. Movant requests this continuance of the hearing and these extensions of time in order to afford a fair opportunity for it to advocate on behalf of all of AEP's customers, including approximately 1.3 million residential consumers, all of whom are directly affected by issues related to AEP's applications in the above stated cases. These requests will also benefit others who are similarly situated.

There is good cause for granting Movant's motion, as further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



---

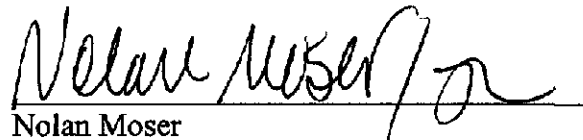
Jeffrey L. Small, Counsel of Record  
Jacqueline Lake Roberts  
Richard C. Reese  
Gregory J. Poulos  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
614-466-8574 (Telephone)  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)



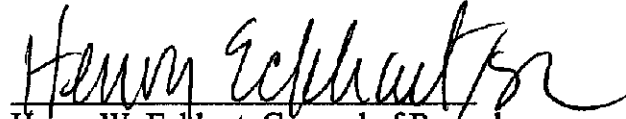
---

David C. Rinebolt  
Ohio Partners for Affordable Energy  
231 West Lima St., P.O. Box 1793  
Findlay, OH 45839-1793  
419-425-8860 (Telephone)  
[drinebolt@aol.com](mailto:drinebolt@aol.com)



Nolan Moser

Air & Energy Program Manager  
The Ohio Environmental Council  
1207 Grandview Ave. Suite 201  
Columbus, OH 43212-3449  
Voice (614) 487-7506  
Fax (614) 487-7510  
Email [nolan@theOEC.org](mailto:nolan@theOEC.org)



Henry W. Eckhart, Counsel of Record  
Attorney for The Sierra Club of Ohio  
50 West Broad Street #2117  
Columbus Ohio 43215  
Phone: (614) 461-0984  
Fax: (614) 221-7401  
E-mail: [henryeckhart@aol.com](mailto:henryeckhart@aol.com)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

---

**MEMORANDUM IN SUPPORT**

---

**I. INTRODUCTION**

Ohio Adm. Code 4901-1-13(A) provides for extensions and “continuances of public hearings” upon a showing of good cause. The circumstances of this Motion show good cause.

R.C. 4928.141(A) requires electric distribution utilities to establish a standard service offer (“SSO”) for their retail electric services an Electric Security Plan (“ESP”) under 4928.143. The first SSO application filed under the Revised Code, as amended by Sub. S.B. 221, requires an ESP filing (at a minimum). Accordingly, on August 1, 2008, AEP filed applications (“Application”) with the Commission in the above captioned case where the Companies seek approval of their proposed ESPs.

About the time AEP’s Applications were filed, SSO applications were filed by Duke Energy Ohio, Inc. (“Duke Energy”) and by the electric distribution companies affiliated with the FirstEnergy companies (Ohio Edison Company, the Cleveland Electric

Illuminating Company, and the Toledo Edison Company, collectively, "FirstEnergy").

These Duke Energy and FirstEnergy cases will likely share numerous intervenors with the above-captioned cases. Similar motions with regard to the pending applications of these companies are being filed.

## **II. ARGUMENT**

### **A. The Commission Should Continue the Hearing Date and Extend the Discovery Deadline as Well as the Deadline for Filing Testimony to Permit Intervening Parties a True Opportunity to be Heard.**

Shortly after AEP filed its SSO applications, the PUCO issued a case schedule in the above-captioned case on August 5, 2008. Schedules were also issued in the Duke Energy and First Energy cases. The PUCO established extremely constricted and demanding schedules in these cases.

The constricted schedule in the instant proceeding is exacerbated in large part to the complicated financial, technical, and legal matters involved in the cases. Disregarding the Duke and First Energy filings, in this case alone, the PUCO will be required to determine (among other things) whether AEP's proposed increases in rates and other charges are reasonable, whether AEP should recover certain transmission and transmission-related costs, including ancillary and congestion costs through a bypassable rider, and whether AEP should invest in capital improvements in AEP's energy delivery systems, as well as what costs will be paid by customers for such improvements.<sup>1</sup> These matters require the resolution of several complicated legal and technical issues, which in turn require that intervenors such as Movant conduct a significant amount of discovery prior to hearings.

---

<sup>1</sup> AEP Applications filed August 1, 2008.

R.C. 4903.082 requires that “[a]ll parties and intervenors shall be granted ample rights of discovery.” That statute also requires the PUCO to regularly review its rules “to aid full and reasonable discovery by all parties.” With respect to the rules referenced in R.C. 4903.082, Ohio Adm. Code 4901-1-16(A) provides that the purpose of discovery rules in PUCO proceedings is to “facilitate thorough and adequate preparation for participation in commission proceedings.”

Given the significance to the public and the complexity of the issues in the AEP cases, the statute and rule cannot possibly be satisfied by the limited opportunity for discovery and preparation that remains prior to a hearing currently scheduled for November 3, 2008. Moreover, any discovery disputes that arise, and the attendant delay in obtaining discovery responses in such circumstances, cannot be resolved on the announced timeline. As is typical for utility applications, most of the information to be discovered in this case is held by the utility, so it is AEP that would benefit from the lack of process -- and the public that may commensurately suffer detriment.

Additionally, in order for Movants to properly litigate this case Movants need expert advice from consultants -- just as AEP has had available to it in the preparation of its Applications. OCC is bound by the Ohio process for engaging experts. The processes OCC must follow will likely take longer than the current PUCO procedural schedule.

OCC began the process of engaging experts even before OCC received notice of AEP's Application. Consultants, once retained, should be given a reasonable amount of time to review the Applications, participate in discovery, and prepare testimony. To facilitate the consultants' work, the intervenor testimony and discovery deadlines should be extended sixty days. Such a continuance would not only facilitate a more proper

hearing schedule, it would also afford the parties and their experts time to pursue a potential negotiated resolution of this case.

The opportunities to conduct pre-hearing discovery, to present testimony, and to cross-examine witnesses called to support the Application in this proceeding are basic to due process.<sup>2</sup> An additional sixty days, while minimal for the preparation of a proceeding of this significance and complexity, would provide Movants critical additional time needed to advocate on behalf of AEP's customers, including more than 1.3 million customers.

Without a reasonable opportunity to conduct adequate discovery and engage experts, and therefore, sufficiently prepare for the presentation of evidence at hearing, Movants and the electric customers of AEP will be denied due process. AEP's customers must be provided due process so they can evaluate, and the Commission can determine, that AEP's electric generation and distribution services are reliable and being provided at reasonable prices.

Finally, it is not reasonably possible for Movant to adequately prepare for this proceeding by the hearing date and meet the testimony and discovery deadlines given that Movant is concurrently preparing for proceedings in the Duke Energy and FirstEnergy SSO cases as well as OCC being involved in several natural gas and electric rate cases before the PUCO.<sup>3</sup> The present hearing date and case schedule do not provide a

---

<sup>2</sup> The Supreme Court of Ohio recently noted OCC's discovery rights that are codified for parties under the PUCO's rule in Ohio Adm. Code 4901-1-16 and elsewhere. *Ohio Consumers' Counsel v. Public Utilities Comm.* (2006), 111 Ohio St.3d. 300 at ¶ 83. The General Assembly codified discovery rights in R.C. 4903.082.

<sup>3</sup> *DEO Rate Case*, Case Nos. 07-829-GA-AIR, et al.; *Vectren Rate Case*, Case Nos. 07-1080-GA-AIR; *Duke Energy Distribution Rate Case*, Case No. 08-709-EL-ATA, et al.

reasonable opportunity for participation by interested parties who are similarly involved in multiple PUCO proceedings.

Ohio Adm. Code 4901-1-13(A) provides for extensions and “continuances of public hearings” upon a showing of good cause. The circumstances of this Motion show good cause. Accordingly, the PUCO should continue the hearing date and extend the procedural schedule for sixty days, as shown below

	<b>Present Schedule</b>	<b>New Schedule</b>
Hearings	November 3	January 2
Testimony	October 17	December 16
Discovery	October 24	December 23

This would be consistent with the continuance of a hearing and Ohio Adm. Code 4901-1-29(A)(1)(h). The new testimony due date would meet the requirement under Ohio Adm. Code 4901-1-29(A)(1)(d) that all direct testimony by intervenors must be filed no later than seven days prior to the commencement of the hearing.

**B. AEP Submitted a Plan for the Contingency that the Company's SSO is not Approved by January 1, 2009.**

In its Application for an ESP filed in these proceedings, AEP contemplated that the Commission might not be able to review and approve its ESP by January, 1, 2009, and offered, in part, the following plan:

The Companies believe that the Commission intends to take all necessary actions in order to comply with this requirement. However, in the event that the Commission is unable to meet the statutory requirement, the Companies include as part of its ESP a provision that establishes a one-time rider to reflect the difference between the ESP approved rates and the rates charged under the Companies' existing standard service offer and reflects the length of time between the end of the December 2008 billing month and the effective date of the new ESP rates. It is proposed that the



amount to be recovered under this provision of the ESP would be recovered over the remaining billing months in 2009, with a true-up, if necessary, in the first quarter of 2010.<sup>4</sup>

The transition to the ESP proposed by AEP includes recovery in 2009 of the difference between the current rate and the ESP rate when they are approved by the Commission. Movant believes that AEP's proposal to continue the current rates and terms in effect until the final ESP rate is determined, subject to reconciliation, is reasonable. This is similar to the plans proposed by Duke and that was proposed for FirstEnergy in the Motion for Continuance. This approach is reasonable and should be acceptable to all parties. In making this proposal, OCC is not conceding any arguments regarding the lawfulness or reasonableness of the ESP or RSP, including any issues on appeal.

With the need to extend the instant proceedings beyond January 1, 2009, and a feasible plan offered by AEP the Commission should grant the Movant's Motion for Continuance of the Hearing and Extensions of Time.

**C. In the Alternative to Continuing the Hearings Movant Proposes the Commission Extend the Discovery and Testimony Deadlines.**

If the Commission determines not to continue the hearings in these Applications, past the 150 day timeframe, or extend the discovery and intervenor testimony deadline by 60 days, Movant requests in the alternative that the hearings be continued and intervenor testimony and discovery deadlines be extended for at least 15 days. With a minimal 15 day extension and continuance Intervenor testimony would be due November 3, Discovery would close November 10<sup>th</sup>, and the hearings would commence November 18<sup>th</sup>. Movant has established good cause justifying this request.

---

<sup>4</sup> Applications, July 31, 2008 at 17, 18.

### III. CONCLUSION

As demonstrated above and for good cause shown, the Commission should grant Movant's Motion for Continuance of the Hearing and Extensions of Time. Granting reasonable time will increase the potential for this case to proceed in a manner that is open and transparent to the public and on a realistic timeline with meaningful opportunities for preparation, all of which are objectives commensurate with the profound issues to be resolved that significantly affect the public's vital interest in electric service.

Respectfully submitted,

Janine L. Migden-Ostrander  
Consumers' Counsel



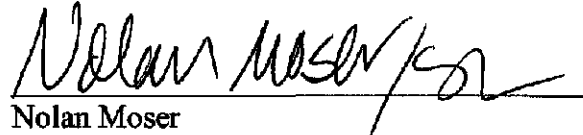
---

Jeffrey L. Small, Counsel of Record  
Jacqueline Lake Roberts  
Richard C. Reese  
Gregory J. Poulos  
Assistant Consumers' Counsel

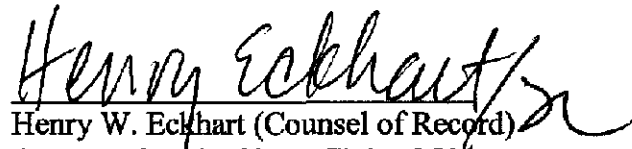
**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
614-466-8574 (Telephone)  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[roberts@occ.state.oh.us](mailto:roberts@occ.state.oh.us)  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)



David C. Rinebolt  
Ohio Partners for Affordable Energy  
231 West Lima St., P.O. Box 1793  
Findlay, OH 45839-1793  
419-425-8860 (Telephone)  
[drinebolt@aol.com](mailto:drinebolt@aol.com)



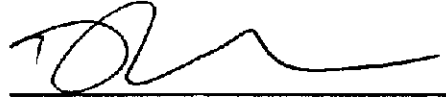
Nolan Moser  
Air & Energy Program Manager  
The Ohio Environmental Council  
1207 Grandview Ave. Suite 201  
Columbus, OH 43212-3449  
Voice (614) 487-7506  
Fax (614) 487-7510  
Email [nolan@theOEC.org](mailto:nolan@theOEC.org)



Henry W. Eckhart (Counsel of Record)  
Attorney for The Sierra Club of Ohio  
50 West Broad Street #2117  
Columbus Ohio 43215  
Phone: (614) 461-0984  
Fax: (614) 221-7401  
E-mail: [henryeckhart@aol.com](mailto:henryeckhart@aol.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Movant's Motion for Continuance of the Hearing and Extensions of Time has been served upon the following parties via electronic transmission this 28th day of August, 2008.



Jacqueline Lake Roberts  
Assistant Consumers' Counsel

**SERVICE LIST**

Marvin Resnik  
Steve Nourse  
AEP Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215

John Jones  
William Wright  
Werner Margard  
Assistant Attorneys General  
Public Utilities Commission of Ohio  
180 E. Broad St., 9<sup>th</sup> Fl.  
Columbus, OH 43215

John W. Bentine  
Mark S. Yurick  
Matthew S. White  
Chester, Willcox & Saxbe LLP  
65 East State St., Ste. 1000  
Columbus, OH 43215-4213

Michael R. Smalz  
Joseph V. Maskovyak  
Ohio State Legal Services Association  
Appalachian People's Action Coalition  
555 Buttles Avenue  
Columbus, OH 43215

Attorney for The Kroger Company, Inc.

Attorneys for APAC

Barth E. Royer  
Bell & Royer Co. LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Daniel R. Conway  
Porter Wright Morris & Arthur  
Huntington Center  
41 S. High Street  
Columbus, Ohio 43215

The Ohio Environmental Council and  
Dominion Retail, Inc.

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour And Pease LLP  
52 East Gay St., P. O. Box 1008  
Columbus, OH 43216-1008

Attorneys for Constellation NewEnergy,  
Inc. and Constellation Energy  
Commodities Group, Inc.

Samuel C. Randazzo  
Lisa G. McAlister  
Daniel J. Neilsen  
Joseph M. Clark  
McNees, Wallace & Nurick LLC  
21 East State St., 17th Fl.  
Columbus, OH 43215

Attorneys for Industrial Energy Users-Ohio

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 East Seventh St., Ste. 1510  
Cincinnati, OH 45202

Attorneys for The Ohio Energy Group

[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com)  
[dneilsen@mwncmh.com](mailto:dneilsen@mwncmh.com)  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)  
[Thomas.McNamee@puc.state.oh.us](mailto:Thomas.McNamee@puc.state.oh.us)  
[william.wright@puc.state.oh.us](mailto:william.wright@puc.state.oh.us)  
[Werner.Margard@puc.state.oh.us](mailto:Werner.Margard@puc.state.oh.us)  
[drinebolt@aol.com](mailto:drinebolt@aol.com)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)  
[dboehm@bklawfirm.com](mailto:dboehm@bklawfirm.com)  
[mkurtz@bklawfirm.com](mailto:mkurtz@bklawfirm.com)  
[miresnik@aep.com](mailto:miresnik@aep.com)  
[stnourse@aep.com](mailto:stnourse@aep.com)

Cynthia A. Fonner  
Senior Counsel  
Constellation Energy Group, Inc.  
550 W. Washington St., Suite 300  
Chicago, IL 60661

Attorneys for Constellation NewEnergy,  
Inc. and Constellation Energy  
Commodities Group, Inc.

Richard L. Sites  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620

Attorney for Ohio Hospital Association

[dconway@porterwright.com](mailto:dconway@porterwright.com)  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com)  
[nmoser@theOEC.org](mailto:nmoser@theOEC.org)  
[trent@theOEC.org](mailto:trent@theOEC.org)  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)  
[myurick@cwslaw.com](mailto:myurick@cwslaw.com)  
[mwhite@cwslaw.com](mailto:mwhite@cwslaw.com)  
[msmalz@oslsa.org](mailto:msmalz@oslsa.org)  
[jmaskovyak@oslsa.org](mailto:jmaskovyak@oslsa.org)  
[Cynthia.A.Fonner@constellation.com](mailto:Cynthia.A.Fonner@constellation.com)  
[smhoward@vssp.com](mailto:smhoward@vssp.com)  
[mhpetricoff@vssp.com](mailto:mhpetricoff@vssp.com)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)