

FILE

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.)

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JOINT REPLY TO COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM CONTRA JOINT MOTION FOR CONTINUANCE OF
HEARING AND EXTENSION OF TIME
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
THE OHIO ENVIRONMENTAL COUNCIL

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") and the Ohio Environmental Council ("OEC") (collectively, "Movants"), on behalf of about 1.3 million electric customers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "AEP" or "Companies") reply to AEP's Memorandum Contra the Joint Motion by Movants¹ filed on August 28, 2008. Movants' Motion was preceded, on July 31, 2008, by AEP's filing of Applications for approval of

¹ The Movants who filed the original August 28, 2008 motion included OCC, OEC, the Sierra Club of Ohio, and Ohio Partners for Affordable Energy.

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the electric security plans (ESP) in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO. The Applications affect all of AEP's electric customers, including almost 1.3 million residential electric service customers in Ohio. Movants sought a sixty-day continuance of the hearing date in the above-captioned case, currently set for November 3, 2008. In addition, Movants requested from the Commission a similar, sixty-day extension of the discovery deadline currently set at October 21, 2008, and the deadline to file intervenor testimony, currently set at September 17, 2008. Alternatively, Movants sought to extend the discovery deadline, the time for filing intervenor testimony, and to continue the hearings for at least fifteen days. On September 2, 2008, AEP filed its Memorandum Contra to the Movants' Motion.

II. ARGUMENT

While AEP provides numerous arguments in its Memorandum Contra, these arguments conflict with statements made in AEP's application and with provisions in S.B. 221 that anticipate the 150 day timeline not being met. AEP argues that R.C. 4928.143(C)(1) requires a Commission order in this case by December 28, 2008, and presents an insurmountable statutory impediment to granting either a 60-day or 15-day extension as requested by Movants. AEP Memo Contra at 4. According to AEP, the Commission cannot grant an extension of 60 days because the hearing would not even start until after the date the Commission is required to issue its order. *Id.* Additionally, AEP asserts that a 15-day extension too should be denied because it would turn the current procedural schedule into a "strong likelihood that the statutory deadline would be unmet." *Id.*

Further, notwithstanding the statutory impediment, AEP asserts that Movants have not presented a compelling argument for the extension. Three months of discovery, plus additional time for depositions are enough says AEP. The only legitimate discovery time crunch, according to AEP, is the one related to intervenor's testimony and the fact that AEP will only have two business days after such testimony to prepare and serve discovery.

If the start of the hearing is delayed, and the Commission's order is delayed beyond December 28, 2008, AEP believes it should be permitted to implement a surcharge to collect the ultimate authorized increase in revenues that would have been collected if the order had been issued in 150 days. This proposal appears in AEP's Application at pages 17-18.

Even the Ohio Legislature recognized that the 150 day deadline may not be met, as seen in various sections of S.B. 221. The legislation anticipates, illustrates, and makes allowances for scenarios that would extend the approval process beyond 150 days. For instance under section 4928.141 the rate plan of an electric distribution utility is to continue until a standard service offer is authorized. Under R.C. 4928.143 (C)(1), if there is a subsequent application filed by a utility (where the initial application is not approved, or the utility does not accept the modifications of the commission under R.C. 4928.143 (C)(2)(a)), an order is to be issued in a lengthier time frame of 275 days.

AEP in its application also seems to concede that the 150 day deadline may not be met, weakening its argument that the 150 day requirement is an insurmountable impediment to granting Movants' motion for continuance. It seems in the application what really matters to AEP is that it have the ability to go back and collect the difference

between the ESP-approved rate and the existing rate standard service offer “in the event that the Commission is unable to meet the statutory requirement.” Application at 17-18. Admitting that the Commission may not meet the statutory requirement is akin to arguing the statutory deadline is a goal and not the hard and fast requirement that AEP claims in its Memorandum Contra.

Taking AEP’s application arguments to their logical conclusion, the statutory intent (an order in 150 days) can be satisfied so long as it can have its true-up.,. The sixty-day extension will cause the Commission to exceed the 150-day goal. But if AEP’s true-up proposal is adopted, which OCC does not object to, there will be no harm created by granting even the 60-day extension. AEP will be in the same position it would have been in if the order had been issued in the 150 days.

Harm will occur however if interested parties’ procedural due process rights are disregarded in the rush to judgment. While AEP may be able to muster the resources necessary to go forward into the new electric paradigm created under S.B. 221, the fact is that OCC and various other interested parties (and the PUCO) do not have the ample resources that AEP and other public utilities typically possess. OCC and the other parties will be faced with the tremendous challenge of trying three separate ESP cases all in the same time frame. One case alone would be daunting enough but three cases will require a Herculean effort by OCC and others to litigate and at the same time pursue the settlement track all within the next four months.

The additional time requested by Movants will enable Movants to conduct the “full and reasonable” discovery, with “ample” discovery rights, referenced in R.C. 4903.082. Movants have shown good cause for the Commission to grant their Motion.

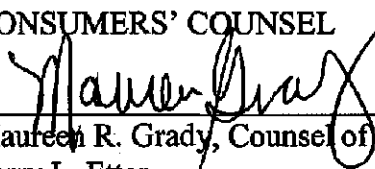
III. CONCLUSION

The Commission should permit an extension and continuance in this proceeding to enable Movants to pursue their due process rights. If AEP's true-up proposal is adopted, AEP will not be harmed if the 150-day statutory goal is not met. AEP will be in the same position it would have been in if the order had been issued in the 150 days, as shown by the proposal that AEP made in its application with regard to the possibility of exceeding the 150-day timeline. Movants have shown good cause to grant the extension.

WHEREFORE, Movant's Motion should be granted.

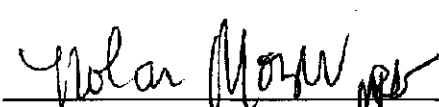
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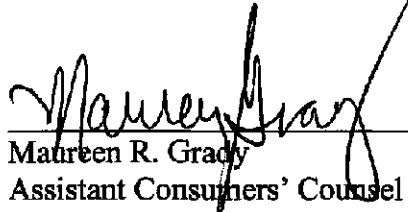
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Memorandum Contra Motion for Continuance and Extension of Time was served via U.S. Mail service, postage prepaid, to the persons listed below on this 5th day of September, 2008.


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