

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

ENTRY

The Attorney Examiner finds:

- (1) On July 31, 2008, Columbus Southern Power Company and Ohio Power Company (jointly AEP-Ohio, Companies) each filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. Each application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (2) As part of the applications, AEP-Ohio filed a request for waivers. In its waiver request, AEP-Ohio noted that the Commission had issued proposed rules for the filing requirements in SSO applications in Case No. 08-777-ORD (08-777), *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as Amended by Amended Substitute Senate Bill No. 221* (Entry issued July 2, 2008). The Companies request three waivers. First, AEP-Ohio request a waiver of proposed Rule 4901:1-35-03, Ohio Administrative Code (O.A.C.), Appendix B, subpart (B), which requires that each ESP include pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP. AEP-Ohio argues that there is no statutory basis for the Commission to require the electric utility to file pro forma financials, as division (E) of Section 4928.143, Revised Code, permits a prospective review of an electric utility's earnings if the ESP exceeds three years. AEP-

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Ohio emphasizes that its proposed ESP has a term of only three years.

Second, AEP-Ohio requests a waiver of proposed Rule 4901:1-35-03, O.A.C., Appendix B, Specific Information, section (A)(1), which requires that the electric utility provide a summary and detailed description for any cost for which the utility seeks automatic recovery. AEP-Ohio contends that the details of its fuel costs adjustment clause will be addressed as a part of the annual audits and, therefore, need not be included as part of the ESP.

Finally, AEP-Ohio requests a waiver of any rule ultimately adopted by the Commission which varies from the information filed by AEP-Ohio in its ESP filing. The Companies state that this waiver request is cautiously made in light of the overlapping rule proceeding and the compressed time frame for filing and reviewing the initial ESP applications.

- (3) On August 15, 2008, the office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra AEP-Ohio's request for waivers. OCC argues that AEP-Ohio has not shown good cause for the requested waivers. OCC asserts that there is nothing in Section 4928.143(E), Revised Code, which prohibits the Commission from reviewing the projected impact of the company's ESP on the utility's earnings. Further, OCC reasons that in the absence of such a prohibition the Commission can evaluate whatever information it deems necessary to carry out the intent of the statutes.

In regards to AEP-Ohio's request for waiver of the summary and detailed description for automatic recovery of costs, OCC notes that in this application AEP-Ohio seeks recovery of more than \$860 million of fuel costs, environmental costs, renewables and fuel purchased power, in addition to \$650 million in deferrals associated with fuel adjustment costs. OCC contends that although it is suggested that quarterly audits be conducted, OCC opines that such audits are not likely to occur during the next several months while the ESP application cases are under review. Thus, OCC concludes that such information is necessary for the Commission to effectively and efficiently review the Companies' ESP applications.

- (4) AEP-Ohio filed a reply to OCC's memorandum contra the request for waivers. In its reply, the Companies argue that good cause for the requested waivers has been demonstrated and that OCC's memorandum contra was not timely filed in compliance with the entry issued on August 5, 2008, in these cases.
- (5) The pro forma financial information and the detailed description for any costs for which the utility seeks automatic recovery is information that is necessary to the Commission's effective and efficient review of these applications as is evident by the Commission's recent adoption of rule provisions in 08-777 which require applicants to file such information. See paragraph C, sections (2) and (9)(i) of Rule 4901:1-35-03, O.A.C. Thus, we find that AEP-Ohio's request for waivers of these requirements is unreasonable and should be denied. Finally, as to AEP-Ohio's request for a waiver of any rule ultimately adopted by the Commission which varies from the information filed by AEP-Ohio in its ESP filing, the Attorney Examiner finds that AEP-Ohio has failed to make a demonstration of good cause for the request and such request is unsupported. Thus, the request is denied. Accordingly, AEP-Ohio is directed to file the pro forma financial information and the summary and detailed description of costs within 10 calendar days after the issuance of this entry.
- (6) By entry issued August 5, 2008, the deadline to file motions to intervene in these matters was September 4, 2008. Timely motions to intervene were filed by the following parties:

Ohio Energy Group
Ohio Consumers' Counsel
The Kroger Company
Ohio Environmental Council
Industrial Energy Users-Ohio
Ohio Partners for Affordable Energy
Appalachian People's Action Coalition
Ohio Hospital Association
Constellation NewEnergy, Inc. and Constellation
NewEnergy Commodities Group, Inc. (jointly
NewEnergy)
Dominion Retail, Inc.

Natural Resources Defense Council
The Sierra Club - Ohio Chapter
National Energy Marketers Association
Direct Energy Services, LLC
Integrus Energy Services, Inc.
Ohio Manufacturers' Association
Ohio Farm Bureau Federation
The American Wind Association, Wind on Wires,
and Ohio Advanced Energy
Ohio Association of School Business Officials, the
Ohio School Boards Association and the
Buckeye Association of School Administrators
Ormet Primary Aluminum Corporation
ConsumerPowerline

- (7) The following entities filed motions to intervene after the deadline established for intervention passed: Morgan Stanley Capital Group (Morgan Stanley) and Wal-Mart Stores East, LP and Sam's East, Inc., along with Macy's, Inc., and BJ's Wholesale Club, Inc. (collectively Commercial Group). The Commercial Group included a motion for leave to file out of time.
- (8) All the motions to intervene assert a real and substantial interest which is not represented by another party to these matters. Further, each motion asserts that the disposition of these proceedings may impair or impede the party's ability to protect that interest. AEP-Ohio did not file a memoranda contra to any of the motions to intervene. The Attorney Examiner finds that, in light of the fact that this is the first time electric utilities have filed applications for standard service offers under Am. Sub. Senate Bill 221, each of the motions to intervene should be granted, notwithstanding the failure to file the motions by the deadline for intervention.
- (9) Motions for admission *pro hac vice* were filed on behalf of the following individuals:

David C. Rinebolt
Cynthia A. Fonner
Craig G. Goodman
Clinton A. Vince

Presley R. Reed
Emma F. Hand
Scott H. Debroff
Stephen J. Romeo
Greg K. Lawrence
Grace C. Wung

- (10) In each motion, an attorney, in good standing and licensed to practice law in the state of Ohio has represented that above listed individuals attorneys in good standing who are licensed to practice law in other jurisdictions. Accordingly, the Attorney Examiner finds that these motions should be granted.

It is, therefore,

ORDERED, That AEP-Ohio's request for waivers is denied and AEP-Ohio directed to file the information within 10 calendar days after the issuance of this entry in accordance with finding (5). It is, further,

ORDERED, That the motions to intervene filed by various parties be granted in accordance with finding (8). It is, further,

ORDERED, That the motions for admission *pro hac vice* filed on behalf of various individuals be granted in accordance with finding (10). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

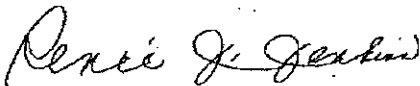


By: Greta See
Attorney Examiner

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Renee J. Jenkins
Secretary