

cases, become informed on electric issues important to them, and plan their schedules for attendance. The Interlocutory Appeal should be certified³ for an immediate determination by the Commission to because it presents a new or novel question of law or policy and to prevent undue prejudice to Ohio consumers and their representatives.

Upon review,⁴ the Commission should reverse or modify the Local Hearing Entry. The Commission should establish a schedule for local hearings that affords adequate (30 days) public notice in advance of the dates of the hearings and adequate time for the public to plan for their appearances at the hearings where they can comment upon the Application by the Companies. Additionally, the Commission should amend the legal notice of the local public hearings to include a listing of major issues affecting residential customers in these cases. The listing should be consistent with the issues presented in the Joint Motion for Local Public Hearings, filed on August 28, 2008. Notably, within that list of issues, were issues related to the quality of electric service provided as well as the reliability of service. In light of the widespread and extended outages that have occurred in the last several weeks, it is appropriate to notify customers about this opportunity to testify on the issues of reliability and service quality that are relevant to the Companies' applications in these proceedings.

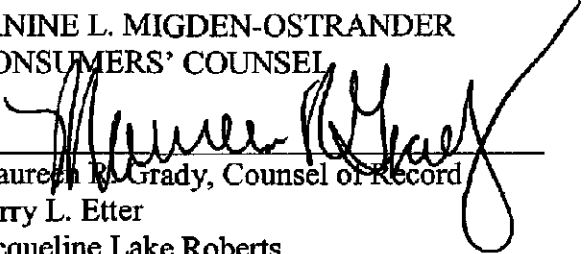
The reasons for this Interlocutory Appeal, including the Request for Certification and the Application for Review, are explained in the attached Memorandum in Support.

³ Ohio Adm. Code 4901-1-15(B).

⁴ Ohio Adm. Code 4901-1-15(C).

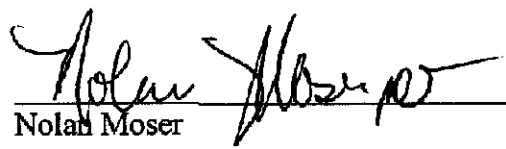
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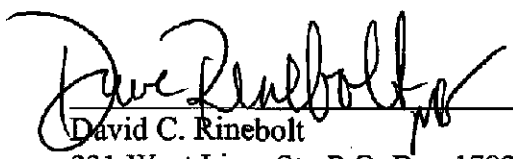


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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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. BACKGROUND

Twenty-eight days after the Companies filed their first-ever Application for an electric security plan ("ESP") under Ohio's new energy law, public interest organizations⁵ moved for local hearings that the public could attend to express their viewpoints to the PUCO regarding electric rates and service. That Motion contained-- among other requests for providing the public with a transparent state regulatory process-- a request that the local hearings be scheduled on a timeline that would allow for notice to be published at least thirty days prior to each hearing and a proposed summary of issues to be published in the legal notice of the hearings⁶.

⁵ Ohio Environmental Council, The Sierra Club Ohio Chapter and Ohio Partners for Affordable Energy joined OCC in the filing of the motion.

⁶ Joint Motion for Local Public Hearings at 6 (Aug. 28, 2008).

But the Local Hearing Entry—in which the public interest organizations’ Motion was not even acknowledged—was issued a mere 20 days before the first of the scheduled hearings. And notice of the hearings, by newspaper publication, as ordered in the entry, will be made sometime thereafter, cutting the advance notice of the public hearings down to less than twenty days before the first scheduled hearing. Moreover, the Local Hearing Entry disregarded the proposed summary of issues. Instead the Entry adopts a notice that will be hard for consumers to understand and insufficient to alert customers to the issues raised by the filings.

The Local Hearing Entry (a copy of which is attached) and the summary of major issues are the subjects of this appeal.

II. CERTIFICATION OF INTERLOCUTORY APPEAL

The full Commission will review the Attorney Examiner’s ruling if the Attorney Examiner (or other PUCO personnel) certifies the Appeal. The standard applicable to certifying this appeal is that “[a]n immediate determination by the commission is needed to prevent the likelihood of undue prejudice....”⁷ That standard is met in this instance and the appeal should be certified.

First, this matter presents a new or novel question of law or policy. In proposing an Energy Policy for Ohio, the Administration adopted, as one of its principles, that there must be transparency in Ohio’s regulatory process for establishing rates that utilities charge and customers pay.⁸ One primary means of ensuring transparency in the regulatory process is to hold local public hearings that provide a meaningful opportunity

⁷ Ohio Adm. Code 4901-1-15(B).

⁸ T. Strickland, Energy, Jobs, and Progress Proposal, (2007), <http://www.governor.ohio.gov/News/>

for customers to participate in the regulatory process. In addition, the Ohio General Assembly adopted new elements of the Ohio policy in R.C. 4928.02 applicable to this case. The limited advance notice of these hearings and the lack of adequate summary of major issues for the notice present a new or novel question of policy for this first-ever electric security plan (ESP) proposed by the Companies.

Also, there is undue prejudice to the Ohio public—and its representatives—where the advance notice of the local hearings is compressed to the point, as here, that it limits the public's opportunity to learn of the hearings, prepare for testifying and adjust their schedules to appear on the day and time of the local hearings. Additionally, without an understandable summary of major issues, the public will not know what issues they should address in their testimony. Indeed the public may not even exercise their opportunity to be heard, based on their potential misunderstanding of the issues raised. Because the application is so complex and involves so many issues that will impact the Ohio public each of those issues should be listed, including quality of service and reliability issues.

The Companies certainly had the resources available to deploy for preparation of the rate Application filed. The public lacks such resources and should be given more time to learn about and prepare for the local hearings. This is crucial to the public being afforded the opportunity to be heard on the applications. After all, the fundamental requisite of due process of law, guaranteed by the 14th amendment, is the opportunity to be heard.⁹ The opportunity to be heard can have no meaning if one is not informed of the issues in contention and consequently can not make a decision as to whether to challenge

⁹ *Grannis v. Ordean*, 234 U.S. 385, 394(1914) citing *Louisville & N.R. Co. v. Schmidt*, 177 U.S. 230, 236 (1900) and *Simon v. Craft*, 182 U.S. 427, 436 (1901).

or object to the matter. Given that local hearings are imminent under the Local Hearing Entry, an "immediate determination" is needed to prevent undue prejudice in the event the Commission ultimately reverses the ruling in question. Thus, that element for certification of the Interlocutory Appeal is also met.¹⁰

The PUCO has recognized that more than a minimal notice can be necessary for the public:

While the notice published pursuant to Section 4909.191(A), Revised Code, and Rule 4901:1-11-11(C), O.A.C, *is sufficient to satisfy legal requirements of notice, the Commission is concerned* that as many customers of each company as possible receive actual notice of this hearing.¹¹ (Emphasis added.)

While Movants do not concede that providing 30-days notice of the public hearing is going above and beyond legal requirements, it will be unduly prejudicial to those parties representing the public if the public's voices are not heard due to lack of time to learn of the local hearings, prepare and then plan for attendance. Moreover, failing to provide customers with an understandable description of the issues in the applications may deprive customers of their opportunity to be heard on issues that include service quality and reliability.

III. APPLICATION FOR REVIEW

Movants' Application for Review meets the terms of Ohio Adm. Code 4901-1-1-15(C), because the application has been filed "within five days after the ruling is issued" and the application does "set forth the basis of the appeal and citations of any

¹⁰ *Id.*

¹¹ *In re Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Ohio Power Company et. al.*, Case No. 91-101-EL-EFC, Opinion and Order (May 16, 1991) at 3-4. (In accordance with R.C.4905.31, a public hearing shall be held to allow the Commission to review the fuel procurement practices and policies of their various electric companies.)

authorities relied upon.” The PUCO should reverse or modify the Local Hearing Entry, pursuant to Ohio Adm. Code 4901-1-15(E).

Consumers and their representatives will be prejudiced if the local hearings are scheduled without sufficient advance notice to the public regarding the dates, times, and location of the public hearings and the issues to be resolved by the hearings. That notice timing should be thirty days in advance of the hearings, as requested in the Motion of the consumer groups. The lack of adequate public notice of the local public hearings could also prevent the Commission from having a complete record in this matter to make an informed decision, under R.C. 4903.09.

Additionally, the Notice should include the summary of major issues as suggested in the Joint Motion¹² or the public will not know what issues to address in their testimony. Without being apprised of the issues in the case, which include service quality and reliability, customers may make the decision not to challenge or object to the matter or may not understand the scope of the opportunity to testify. Customers will thus be deprived of their opportunity to be heard. The Motion was not addressed or even acknowledged in the Local Hearing Entry, so a discussion cannot be provided here about the rationale of the ruling.

The Commission has recognized in a prior case that a minimal notice that could be provided to the public in a case is not necessarily the notice that is adequate for the public:

While the notice published pursuant to Section 4909.191(A), Revised Code, and Rule 4901:1-11-11(C), O.A.C, *is sufficient to satisfy legal requirements of notice, the Commission is concerned*

¹² Joint Motion for Local Public Hearings.

that as many customers of each company as possible receive actual notice of this hearing.¹³ (Emphasis added.)

In this first-ever filing of the Companies' plans under Ohio's new energy law, more than minimal notice is needed to adequately inform the public of their opportunity to testify, so that they may seek information about the issues involving their already high electric rates, prepare for testimony at hearings, and arrange their schedules.

Consistent with Ohio Adm. Code 4901-1-15(E)(1), the Commission should modify or reverse the Entry of September 17, 2008, and schedule the public hearings with at least 30-days notice provided to the customers of the Companies and incorporate in that notice the summary of major issues previously proposed by the public interest organizations.¹⁴

IV. CONCLUSION

For the reasons set forth above, this Appeal should be certified to the full Commission and the Commission should reverse or modify the Attorney Examiner's ruling by granting additional time (amounting to thirty days of advance notice) for notice of the local public hearings, and the local public hearings should accordingly be rescheduled. In addition, the summary of issues for the public notice as proposed by Joint Movants in the August 28, 2008 Joint Motion for Local Public Hearings should be utilized instead of the inadequate legal notice proposed in the Local Hearing Entry.

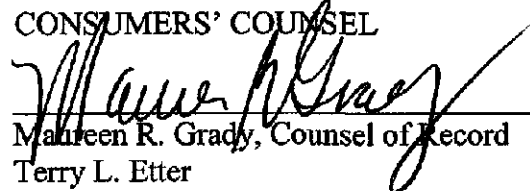
¹³ *In re Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Ohio Power Company et. al.*, Case No. 91-101-EL-EFC, Opinion and Order (May 16, 1991) at 3-4. (In accordance with R.C.4905.31, a public hearing shall be held to allow the Commission to review the fuel procurement practices and policies of their various electric companies.)

¹⁴ Ohio Adm. Code 4901-1-15(E)(1): "(E) Upon consideration of an interlocutory appeal, the commission may, in its discretion either: (1) Affirm, reverse, or modify the ruling."

The lack of adequate advance notice regarding the local public hearings will limit the effectiveness of these hearings in developing the record under R.C. 4903.09. Given the significance of this first-ever proposal for an electric security plan under Ohio's new energy law—affecting customers by the rates they will pay and the service quality they will receive, a thorough proceeding that creates a “complete”¹⁵ record is warranted. A rushed schedule for local public hearings without adequate public notice will result in undue prejudice to Ohioans and their representatives. In the interest of a transparent state regulatory process for the setting of electric rates and the PUCO's acquiring of all the information needed for making “findings of fact and written opinions”¹⁶, the Commission should re-schedule the local hearings with adequate advance notice and adequate issue summaries.

Respectfully Submitted,

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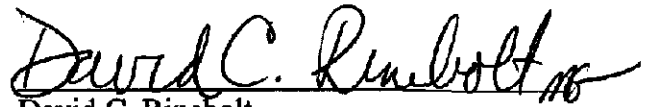
¹⁵ R.C. 4903.09.

¹⁶ *Id.*



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Interlocutory Appeal was served by electronic service and by U.S. Mail, prepaid, to the counsel identified below (provided electronically to the Attorney Examiners) this 29th day of September 2008.


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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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 (AEP-Ohio) each filed an application for a standard service offer pursuant to Section 4928.141, Revised Code. Each application is for an electric security plan in accordance with Section 4928.143, Revised Code.
- (2) In order to provide customers of AEP-Ohio a reasonable opportunity to provide public testimony in these proceedings, local public hearings will be conducted on the following dates:
 - (a) Tuesday, October 14, 2008, at 6:30 p.m., at Washington State Community College, Arts & Science Building, Harvey Graham Auditorium, 710 Colegate Drive, Marietta, Ohio 45750.
 - (b) Thursday, October 16, 2008, at 6:30 p.m., at Glenwood Middle School, Auditorium, 1015 44th Street N.W., Canton, Ohio 44709.
 - (c) Monday, October 20, 2008, at 6:30 p.m., at Lima Senior High School, 1 Spartan Way, Lima, Ohio 45801.
 - (d) Tuesday, October 21, 2008, at 12:30 p.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio 43215.

- (e) Monday, October 27, 2008, at 6:30 p.m., at Whetstone Park of Roses Shelter House, 3901 N. High Street, Columbus, Ohio 43214.
- (3) Accordingly, AEP-Ohio should publish notice of the local public hearings one time in a newspaper of general circulation in each county in its certified territory. The notice should not appear in the legal notices section of the newspaper. The notice should read as follows:

LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled local hearings in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Security Plans*. In their respective applications, Columbus Southern Power Company and Ohio Power Company seek Commission approval of an electric security plan filed pursuant to Am. Sub. Senate Bill 221, which was signed into law on May 1, 2008. The bill requires electric utilities to establish a standard service offer and, as part of that process, to file an application for approval of an electric security plan. According to the applications, Columbus Southern Power Company's and Ohio Power Company's electric security plans would limit the increases in customer rates for generation and distribution charges to approximately 15 percent per year for each of the years 2009, 2010 and 2011. In addition, the applications propose investment in capital improvements for the companies' energy delivery systems, energy efficiency initiatives, as well as economic development and job retention programs and for Columbus Southern Power Company's transfer of generation assets.

The local hearings are scheduled for the purpose of providing an opportunity for interested members of the public to testify in this proceeding. The local hearings will be held as follows:

- (a) Tuesday, October 14, 2008, at 6:30 p.m., at Washington State Community College, Arts & Science Building, Harvey Graham Auditorium, 710 Colegate Drive, Marietta, Ohio 45750.

- (b) Thursday, October 16, 2008, at 6:30 p.m., at Glenwood Middle School, Auditorium, 1015 44th Street N.W., Canton, Ohio 44709.
- (c) Monday, October 20, 2008, at 6:30 p.m., at Lima Senior High School, 1 Spartan Way, Lima, Ohio 45801.
- (d) Tuesday, October 21, 2008, at 12:30 p.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio 43215.
- (e) Monday, October 27, 2008, at 6:30 p.m., at Whetstone Park of Roses Shelter House, 3901 N. High Street, Columbus, Ohio 43214.

The evidentiary hearing will commence on November 17, 2008, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 East Broad Street, Columbus, Ohio 43215. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puco.ohio.gov>, or contacting the Commission's hotline at 1-800-686-7826.

It is, therefore,

ORDERED, That local public hearings in these proceedings be held as set forth in finding (2). It is, further,

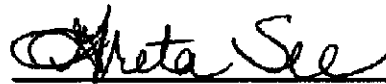
ORDERED, That AEP-Ohio publish notice of the hearings as set forth in finding (3). It is, further,

08-917-EL-SSO
08-918-EL-SSO

-4-

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


/vrm

Entered in the Journal



Renee J. Jenkins
Secretary