

FILE

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

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In the Matter of the Application of Columbus)
Southern Power Company for the Approval of)
its Electric Security Plan; and Amendment to)
Its Corporate Separation Plan; and the Sale or)
Transfer of Certain Generation Assets)

Case No: 08-917-EL-SSO

In the Matter of the Application of Ohio Power)
Company for Approval of its Electric Security)
Plan, and an Amendment to its Corporate)
Separation Plan)

Case No. 08-918-EL-SSO

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM CONTRA
INTERLOCUTORY APPEAL, REQUEST FOR
CERTIFICATION AND
APPLICATION FOR REVIEW**

Five local public hearings were ordered by an attorney examiner's Entry in this proceeding. The Entry, issued on September 24, 2008 directed Columbus Southern Power Company and Ohio Power Company (the Companies) to publish notice of these hearings one time in a newspaper of general circulation in each county in the Companies' certified territory. With the first of the five hearings scheduled for October 14, 2008, the Companies have arranged for the notice to be published in newspapers throughout 61 of Ohio's 88 counties on October 8, 2008.

On September 29, 2008 the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy and Ohio Environmental Council (the Movants) filed an interlocutory appeal, requesting certification of the appeal to the Commission. They seek a reversal of the Entry and the establishment of a "schedule for local hearings that afford adequate (30 days) notice in advance of the dates of the hearings and adequate time for the public to

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plan for their appearance at the hearings where they can comment upon the Application by the Companies.” (Appeal, p.2). Further, Movants want the Commission to “amend the legal notice of the local public hearings to include a listing of major issues affecting residential customers in these cases. (*Id.*).

Pursuant to §4901-1-15 (D), Ohio Admin. Code, the Companies file this memorandum contra. Because the Movant’s filing does not meet the requirements for an interlocutory appeal under §4901-1-15, Ohio Admin. Code, and because rescheduling these local public hearings and/or modifying the notice that is set to be published would result in untold confusion, the request for certification of an interlocutory appeal should be denied.

Since none of the conditions listed in §4901-1-15 (A) (1) – (4), Ohio Admin. Code, for pursuing an interlocutory appeal without certification to the Commission apply, the Movants’ appeal can proceed only if it is certified to the Commission under §4901-1-15 (B), Ohio Admin. Code. Under that division, a party must establish that the ruling for which review is sought “presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question.” The Movants fail in this regard.

The scheduling of local public hearings is not a new or novel practice for the Commission. It presents no question of interpretation, law or policy. Further, providing less than thirty days notice prior to such a hearing is not a departure from Commission precedent. Two recent Entries support the Companies’ position.

On September 30, 2008 the attorney examiner in the FirstEnergy Companies' Electric Security Plan (ESP) proceeding considered a request for certification of an appeal raising the same thirty days notice argument. The Entry held:

Nonetheless, the attorney examiner finds that the joint appeal does not present a new or novel question of law or policy. Although this proceeding is one of the first cases under the statutory framework established by Am. Sub. Senate Bill 221, the Commission and its attorney examiners have had years of experience scheduling local public hearings in cases affecting rates; therefore, the appeal does not present a new or novel question of law or policy.

Further, the attorney examiner finds that the joint interlocutory appeal is not taken from a ruling which represents a departure from past precedent. The case at issue is similar to cases involving applications for an increase in rates filed pursuant to Section 4909.18, Revised Code. It has not been Commission practice in rate cases, where local public hearings are required by statute, to provide 30 days notice.

The next day, the attorney examiner in Duke Energy Ohio's ESP proceeding, considered a certification request which also focused on the 30 day notice issue. In denying the certification request, the attorney examiner reached the same conclusion reached the day before in Case No. 08-935-EL-SSO.²

The request for certification also fails to demonstrate that the notice for the local public hearings would result in undue prejudice or expense to residential customers. In both the FirstEnergy and Duke Energy Ohio cases the Entries cited above rejected these

¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 08-935-EL-SSO, Entry, pp. 3,4.

² *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO.

same arguments that now are being raised in the Companies' ESP proceeding. (See *FirstEnergy* Entry pp. 4, 5 and *Duke Energy Ohio*, Entry, p. 8). In both of those Entries, the attorney examiners cited the statutory 150-day time period for ruling on those ESP applications as context for considering the adequacy of the local public hearing notice. Further, in the *Duke Energy Ohio* case the attorney examiner noted that since the movants could have begun to prepare their witnesses prior to the issuance of the Entry setting the local public hearings, the movants had at least the thirty days to prepare that they now seek. (*Id.*)

These same considerations apply to the present certification request. Moreover, it must be recognized that OCC is the statutory representative of the Companies' residential customers. OCC has a full opportunity to pre-file testimony in this case, and already has obtained additional time to do so. With that further understanding, it cannot be said that the notice of local public hearings is so insufficient (either as to time or content) as to result in undue prejudice or expense to any party.

The Movants also assert that the content of the notice that will be published is so inadequate as to meet the requirements for certification under §4901-1-15 (B), Ohio Rev. Code. The notice will inform customers that the Companies' ESP:

“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.”

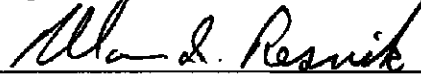
This notice informs readers of the scope of the issues involved in this case, including proposed improvements for the Companies' energy delivery systems. Commission precedent does not require a description of the issues in the case which is so detailed as to present a restatement of the application.

Further, there can be no prejudice to residential customers even if every issue and every associated nuance is not included. The residential customers' statutory counsel has had the Companies' application and supporting testimony since July 31, 2008. This is more than sufficient time for OCC to become familiar with the general scope as well of the details of the application. Since OCC asserts that its intervention is on behalf of the Companies' residential customers, it cannot argue that its familiarity with the application is insufficient and that its clients, the residential customers, must also be advised of the scope of the application through the published notice.

Finally, in considering whether to certify this appeal to the Commission, it should be noted that the public hearing notice will be published on October 8, 2008. In fact, at least one newspaper is able to publish the notice on October 6, 2008. Canceling the scheduled hearings and re-establishing dates for those hearings for some later dates will likely cause considerable confusion and may well result in less public participation rather than greater participation. Further, despite efforts to let the public know that those hearings have been cancelled, some customers are bound to show up and find a locked building with no hearing scheduled. The issues raised by the Movants do not warrant the confusion and anger that is likely to accompany the reversal of the Entry setting local public hearings.

For these reasons, the Movant's request for certification of the September 24, 2008 Entry for appeal to the Commission should be denied

Respectfully submitted,



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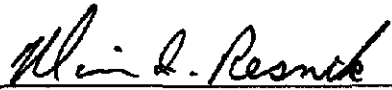
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Interlocutory Appeal, Request for Certification and Application for Review was served by electronic mail upon the individuals listed below this 6th day of October, 2008.


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