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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.)

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BRIEF ON A 1/1/09 PLAN
BY
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

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I. INTRODUCTION

On July 31, 2008, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively, "AEP Ohio" or "Companies") filed in this case their first-ever application ("Application") for approval of an electric security plan ("ESP"). If granted by the Public Utilities Commission of Ohio ("PUCO" or "Commission"), the Application will impose significant rate increases upon AEP Ohio's customers.

The Companies included in their ESP a contingency plan in the event that the PUCO does not reach a decision on their ESP by the statutorily imposed deadline of 150 days.¹ Section V.E. of the Companies' Application sets forth the proposed contingency plan ("Section V.E Plan") to address what happens if the Commission does not issue an

¹ R.C. 4928.143(C)(1).

order for new rates to be in effect on January 1, 2009.² This short-term ESP proposal includes a one-time rider to allow the Companies to collect from customers the difference between the Companies' existing Rate Stabilization Plan ("RSP") rates³ and the ESP rates that the Commission ultimately approves, to be based on the length of time between the Companies' January 2009 billing cycle (i.e., the end of the December 2008 billing month) and the effective date of the ESP rates.⁴ The Companies' proposal provides them with a mechanism to collect from customers what the Companies claim may be under-charges, without any corresponding proposal to credit customers in the event that the rates ultimately approved by the PUCO result in over-charges.⁵

In testimony filed on November 10, 2008, the PUCO Staff proposed an alternative to AEP Ohio's Section V.E Plan ("Staff Alternative Plan"). The PUCO Staff recommends that the Commission authorize AEP Ohio to continue its "rate plan," but with significant modifications. For example, the PUCO Staff would allow the Companies to collect from customers additional increased generation rates.⁶ The generation rate increases include the automatic increases allowed under the RSP for each company (3% for CSP and 7% for OP), but set to expire on December 31, 2008, plus another "full additional 4% increase of generation rates" that, under the RSP, AEP Ohio would have had to justify as being necessary to cover incurred costs. The PUCO Staff

² Application at 17-18.

³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC Opinion and Order (January 26, 2005) ("04-169 Order").

⁴ See Application at 17-18.

⁵ See Tr. Vol. II at 53 (Baker).

⁶ See PUCO Staff Ex. 1 (Hess Testimony) at 9.

would also extend some rates, including distribution-related rates, that are set to expire on December 31, 2008.⁷

The Office of the Ohio Consumers' Counsel ("OCC"), a member of the Ohio Consumer and Environmental Advocates ("OCEA"), presented the rebuttal testimony of Beth Hixon on the subject of a short-term ESP, on November 22, 2008. Ms. Hixon recommended that, effective January 1, 2009, the Commission authorize AEP Ohio to charge customers the standard service offer ("SSO") rates in tariffs that were in effect on July 31, 2008 (the effective date of S.B. 221).⁸ Under her recommendation, customers would not experience any increase in SSO generation rates if the Companies do not have Commission-approved standard service offers under an ESP as of January 1, 2009.⁹

This brief by the undersigned members of OCEA responds to the PUCO's request for briefs on whether a short-term ESP should be instituted while the PUCO considers the Companies' SSO proposal.¹⁰ As discussed herein, both AEP Ohio's and the PUCO Staff's proposals are contrary to R.C. 4928.141(A). In addition, the PUCO Staff's proposal would allow AEP Ohio to impose cost-based increases in customers' rates without justifying the increase, as required by AEP Ohio's RSP, and would unlawfully extend some distribution-related rates that are intended to expire at the end of 2008. The

⁷ The short-term ESP proposals offered by the Companies and by the PUCO Staff are discussed in more detail in Section II of this Brief.

⁸ See OCC Ex. 3 (Hixon Rebuttal) at 3. Unlike OP, CSP has both summer and winter rates. Because both the summer and winter rates were tariffed as of July 31, 2008, the winter rates would apply until June 1, 2009 as provided in CSP's tariff. See Tr. Vol. II at 237-238 (Hixon). If AEP Ohio does not have an ESP in effect by June 1, 2009, CSP's summer rates would apply until October 1, 2009, at which time the winter rates would apply, per CSP's tariff.

⁹ OCC Ex. 3 (Hixon Rebuttal) at 3.

¹⁰ The Attorney Examiner made the briefing request orally at the November 10, 2008 prehearing conference.

Commission should reject both proposals, and instead should authorize AEP Ohio to maintain the status quo by continuing the Companies' existing rate plan – the standard service offer in effect on July 31, 2008 – as required by law.

II. THE SHORT-TERM ESP PROPOSALS

A. AEP Ohio's Section V.E. Proposal

The Application addressed the possibility that the PUCO cannot act on AEP Ohio's ESP within 150 days, as required by law.¹¹ The Section V.E Plan "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."¹² AEP Ohio proposes to collect this "over the remaining billing months in 2009, with a true-up, if necessary, in the first quarter of 2010."¹³

Because the rate that the PUCO may eventually approve for AEP Ohio's SSO is unknown, the Companies have not quantified the exact impact of their proposal on their customers.¹⁴ What is known about the Companies' interim SSO is that if it were implemented as filed, in the first full year customer rates would be increased to allow collection of additional annual revenue of \$238.5 million from CSP customers¹⁵ and \$224.5 million from OP customers.¹⁶

¹¹ Application at 17-18.

¹² Id.

¹³ Id. at 18.

¹⁴ Tr. Vol. I at 45 (Roush).

¹⁵ AEP Ohio Ex. 1 (Roush), Exhibit DMR-1, page 1 - CSP 2009 Total Increase.

¹⁶ Id., Exhibit DMR-1, page 2 - OP Total Increase.

B. The Staff's Alternative Plan

AEP Ohio's existing RSP was approved in Case No. 04-169-EL-UNC. Under the RSP, AEP Ohio was granted automatic generation rate increases of 3% for CSP and 7% for OP annually, through 2008.¹⁷ In addition, under the RSP AEP Ohio could seek up to an additional 4% generation rate increase to recover increased expenditures incurred for environmental requirements, security, taxes, new generation-related requirements, and customer load switches (shopping). AEP Ohio was required to justify this latter increase, and could receive less than the 4%.¹⁸ Moreover, the RSP generation rate increases could be implemented only after a Commission hearing, and was a bypassable increase.¹⁹

The PUCO Staff, on the other hand, proposed to "continue" AEP Ohio's rate plan, but with some significant modifications.²⁰ The Staff's Alternative Plan would eliminate this justification requirement of the Companies' rate plan by allowing "the full additional 4%" generation rate increase for both companies, without requiring AEP Ohio to justify the rate increase. The 3% generation increase would cost CSP customers \$31,550,000 on an annualized basis, and the additional 4% generation increase would cost CSP customers more than \$42,000,000 per year.²¹ The 7% generation increase would cost OP customers

¹⁷ 04-169 Order at 9, 15-18.

¹⁸ Id. at 9, 20-21. See also *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of an Additional Generation Service Rate Increase Pursuant to Their Post-Market Development Period Rate Stabilization Plans*, Case No. 07-63-EL-UNC, Opinion and Order (October 23, 2007) at 26 ("Therefore, the Commission clarifies that, pursuant to the RSP adopted in the RSP case, CSP and OP are each permitted to apply for an additional generation increase that is no greater than an average of 4% per year for the years 2006, 2007, and 2008.").

¹⁹ Id. at 20-22.

²⁰ See PUCO Staff Ex. 1 (Hess Testimony) at 9. The PUCO Staff, however, contends that its proposal does not modify the existing rate plan. See Tr. Vol. I at 132 (Hess). Despite the PUCO Staff's claims, its proposal does modify the rate plan, as discussed herein.

²¹ Tr. Vol. I at 150 (Hess).

\$72,359,000 per year, and the additional 4% generation increase would cost OP customers \$41,348,000 per year.²²

The Staff's Alternative Plan would also price the loads for former Monongahela Power ("Mon Power") and Ormet customers at the market price recommended by OCC witness Lee Smith.²³ This market pricing of former Mon Power customers' load would cost CSP customers an additional \$32,000,000 per year,²⁴ and the market pricing of the Ormet load would cost customers of each Company an additional \$43,900,000 per year.²⁵

The PUCO Staff also recommended that the Commission eliminate the regulatory transition charge ("RTC") rider for CSP customers.²⁶ This would reduce the cost to CSP customers by approximately \$54,238,000.²⁷ The PUCO Staff proposal would also keep in place the provider of last resort ("POLR") rates and "leave the line extension policy in place."²⁸ The PUCO Staff also recommended that the Commission reject a reconciliation, or "true-up," based on the difference between any approved short-term ESP and the SSO rates that the PUCO eventually approves.²⁹

As the following table shows, the Staff's Alternative Plan would cost CSP customers over \$95,000,000 per year more than the existing rate plan and would cost OP customers over \$157,000,000 per year more than the existing rate plan:

²² Id.

²³ PUCO Staff Ex. 1 (Hess Testimony) at 9.

²⁴ Tr. Vol. I at 152 (Hess).

²⁵ Id. at 153 (Hess).

²⁶ PUCO Staff Ex. 1 (Hess Testimony) at 9.

²⁷ Tr. Vol. I at 150 (Hess).

²⁸ PUCO Staff Ex. 1 (Hess Testimony) at 9.

²⁹ Id.

Item	Cost to CSP customers	Cost to OP customers
Annual automatic increase	\$31,550,000	\$72,359,000
4% increase	\$42,000,000	\$41,348,000
Mon Power load	\$32,000,000	N/A
Ormet load	\$43,900,000	\$43,900,000
RTC elimination	(\$54,238,000)	N/A
Total annualized cost	\$95,212,000	\$157,607,000

The actual cost of the Staff's Alternative Plan to AEP Ohio's customers would depend on two factors: (1) the date that the Commission approves an ESP for AEP Ohio and (2) whether AEP Ohio accepts the Commission-approved ESP. The increases proposed by the PUCO Staff would be in effect until the Commission approves an ESP for AEP Ohio. Thus, the longer it takes for the Commission to approve an ESP for AEP Ohio, the more that the Staff's Alternative Plan would cost AEP Ohio customers compared to AEP Ohio's existing rates. In addition, under R.C. 4928.143(C)(2)(a), AEP Ohio could reject the ESP approved by the Commission,³⁰ and if the Commission were to order the Staff's Alternative Plan to remain in effect,³¹ the rate increases allowed under the Staff's Alternative Plan could remain in effect until the PUCO approves an ESP that is acceptable to AEP Ohio.

C. AEP Ohio's Modifications to the Staff's Plan

As an alternative to these approaches, the Companies offered modifications to the Staff approach for the short term. In rebuttal testimony, AEP Ohio asserted that it should

³⁰ R.C. 4928.143(C)(2)(a) allows an EDU to withdraw an ESP application if the Commission "modifies and approves" the application.

³¹ If an EDU withdraws an ESP application under R.C. 4928.143(C)(2)(a), R.C. 4928.143(C)(2)(b) requires the Commission to "issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer" until the PUCO authorizes a subsequent ESP filed under R.C. 4928.142 or 4928.143.

be allowed to recover fuel costs through a reconcilable fuel adjustment clause ("FAC"), "[e]ven if the rest of the interim rates were not reconcilable...."³²

Under this approach, fuel increases alone would boost interim rates, allowing the Companies to collect additional revenue from their customers. The exact amount of additional revenue to the Companies from such fuel increases under interim rates is not known since the period of interim rates and actual fuel increases are not known. However, under their proposed ESP the Companies have estimated annual FAC increases of \$147.9 million for CSP customers³³ and \$66.6 million for OP customers.³⁴

AEP Ohio witness Baker also proposes that, as part of a modified Staff plan, the Companies' current POLR charge should be increased to reflect half of the increase in POLR rates proposed by the Companies in their application.³⁵ The Companies have estimated their requested POLR increases to be additional 2009 revenue of \$93.6 million for CSP³⁶ and \$21.2 million for OP.³⁷ Thus, on an annualized basis one-half of the requested POLR rate increases would be \$46.8 million for CSP customers and \$10.6 million for OP customers.

D. Continuation of the Companies' Existing Rate Plan

OCC offered another alternative in Ms. Hixon's rebuttal testimony. Ms. Hixon recommended that the Commission authorize AEP Ohio to continue charging customers the SSO rates in tariffs that were in effect on July 31, 2008 (the effective date of S.B.

³² AEP Ohio Ex. 5 (Baker Limited Rebuttal) at 7.

³³ AEP Ohio Ex. 1 (Roush), Exhibit DMR-1, page 1 - CSP FAC Increase.

³⁴ Id. Exhibit DMR-1, page 2 - OP FAC Increase.

³⁵ AEP Ohio Ex. 5 (Baker Limited Rebuttal) at 8.

³⁶ AEP Ohio Ex. 1 (Roush), Exhibit DMR-1, page 1 - CSP POLR Increase.

³⁷ Id. Exhibit DMR-1, page 2 - OPR POLR Increase.

221).³⁸ The result of such authorization would be that customers would not experience any increase in SSO generation rates if the Companies do not have Commission-approved standard service offers under an ESP as of January 1, 2009.³⁹

As discussed below, the AEP Ohio and Staff proposals run counter to the requirements of S.B. 221. The Commission should reject the proposals, and instead should follow the law and leave AEP Ohio's July 31, 2008 rate plan in effect with no "true-up" after the Commission approves an ESP for AEP Ohio. The Commission should also allow the current line extension policy, including the monthly surcharges, to expire on December 31, 2008, and should address the line extension policy in a separate distribution rate case.⁴⁰

III. APPLICABLE LAW

R.C. 4928.141(A) sets forth the SSO application process. This provision states, in relevant part, that the "rate plan" shall continue until an SSO is authorized:

Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the **rate plan** of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code.... (Emphasis added.)

The "rate plan" that is to continue is defined under R.C. 4928.01(A)(33) as: "the **standard service offer** in effect on the effective date of the amendment of this

³⁸ See OCC Ex. 3 (Hixon Rebuttal) at 3.

³⁹ Id.

⁴⁰ See Tr. Vol. II at 218-219 (Hixon). See also id. at 215, 228.

section by S.B. 221 of the 127th general assembly.” S.B. 221 became effective on July 31, 2008.

The meaning of the “standard service offer” to be provided by an electric distribution company (“EDU”) beginning on January 1, 2009 is detailed in R.C. 4928.141(A). An EDU shall provide consumers “a standard service offer of all **competitive retail electric services** necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.” (Emphasis added.) R.C. 4928.01(A)(3) further defines the “competitive retail electric services” which the EDU is to provide to consumers as “a component of retail electric service that is competitive under division (B) of this section.” R.C. 4928.01(B) states that retail electric service is competitive if declared so under the Revised Code or under an order of the Public Utilities Commission, pursuant to R.C. 4928.04(A). Since January 1, 2001, an EDU’s retail electric service component of generation has been deemed a competitive retail electric service under R.C. 4928.03.

Thus, under the statute, the Commission must continue AEP Ohio’s rate plan that consists of the SSO that was in effect on July 31, 2008. Additional rate increases or modifications to the existing rate plan would be beyond the scope of the statute.

IV. ARGUMENT

A. The PUCO Should Protect Customers by Rejecting AEP Ohio's Terms for a Short-Term ESP and by Following the Requirements of S.B. 221.

Any short-term ESP must be established consistent with the language of S.B. 221, as codified in R.C. 4928.141(A). Where the PUCO cannot reach a decision on an electric utility's SSO proposed in an ESP before the utility's existing rate plan expires, the law provides that the utility's rate plan "shall continue ... until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code...." (Emphasis added.) Under R.C. 4928.01(A)(33), the "rate plan" of a utility is the SSO in effect on July 31, 2008, the effective date of S.B. 221. Thus, if the PUCO cannot reach a decision in this proceeding before the Companies' existing rate plan expires on December 31, 2008, R.C. 4928.141(A) requires that the Companies' SSO rates in tariffs in effect on July 31, 2008 continue until the Commission authorizes an SSO for the Companies under an approved ESP. Notably, the statute does not provide for a retroactive application of the SSO rate subsequently approved in an ESP.

The Commission is a creature of statute⁴¹ and is without authority to enact rates other than those permitted under S.B. 221, i.e., rates that continue, not modify, the utility's rate plan as required by R.C. 4928.141(A). Moreover, the Commission cannot establish a true-up mechanism without clear legislative authority.

Regarding the true-up mechanism, AEP Ohio's proposal is unbalanced in that benefits may only flow in one direction – to the Companies. Although the Companies'

⁴¹ R.C. 1.42. See also *Columbus Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 537 (1993); *Penn Central Transportation Co. v. Pub. Util. Comm.*, 35 Ohio St. 2d 97, 99 (1973); *Ohio Central Tel. Corp. v. Pub. Util. Comm.*, 166 Ohio St. 180, 182 (1957); *Cincinnati v. Pub. Util. Comm.*, 96 Ohio St. 270, 274 (1917).

proposal provides them with a mechanism to collect from customers what the Companies claim may be under-charges, it lacks a corresponding proposal to credit customers in the event that the rates ultimately approved by the PUCO result in over-charges to customers.⁴² The Commission should not approve a plan that takes from consumers if they pay less than is ultimately determined to be reasonable, but does return dollars to consumers if they pay more than a reasonable rate.⁴³

In offering modifications to the Staff's Alternative Plan, AEP Ohio witness Baker asserts that the Companies should at least be allowed to recover, through a reconcilable fuel adjustment clause, their fuel costs incurred during the interim between the expiration of the rate plan and the effective date of the new SSO.⁴⁴ He claims that S.B. 221 requires such recovery, although he does not cite to any statutory provision for support.⁴⁵

Under S.B. 221, the Companies may include in their ESP provisions for Commission approval to automatically recover **prudently incurred** fuel costs.⁴⁶ The statute gives utilities the ability to seek Commission approval for fuel cost recovery *within an ESP*; it did not require the Commission to separately authorize such fuel recovery *outside an ESP*. R.C. 4928.143(B)(2) only provides for what may be sought through an approved ESP, not what may be sought when the PUCO has not yet approved a new rate plan. Only R.C. 4928.141(A) is applicable to the question of how rates shall

⁴² See Tr. Vol. II at 53 (Baker).

⁴³ It should not be inferred from this observation that OCEA supports a true-up mechanism, but if the Commission chooses such an option, any true-up should be permitted only if it allows benefits to flow in both directions.

⁴⁴ AEP Ohio Ex. 5 (Baker Limited Rebuttal) at 7.

⁴⁵ Id. at 6.

⁴⁶ R.C. 4928.143(B)(2)(a).

be determined if the Commission has not made a decision on the initial ESP or MRO before the existing rates expire on January 1, 2009.

AEP Ohio's Section V.E Plan attempts to go beyond the words of the statute by adding a "true-up" that would authorize collection of any difference between the rates of the interim plan and the ESP rates ultimately approved by the Commission.⁴⁷ AEP Ohio's proposal for reconcilable fuel adjustment clause to modify the Staff's Alternative Plan is also an attempt to go beyond the words of the statute.

Further, the Section V.E Plan would lessen the incentive for AEP Ohio to accept the Commission's ultimate decision on the Companies' Application. If an EDU does not like the modifications to the ESP approved by the PUCO, R.C. 4928.143(C)(2)(a) allows the EDU to withdraw its ESP and file a new proposal.

If AEP Ohio is able to recover the difference between the existing rates and the final approved rate, whenever that might occur, the Companies would have less incentive to accept the PUCO's decision. The Companies could choose to file a new ESP pursuant to R.C. 4928.143(C)(2)(a), knowing that eventually they would collect the difference between the existing rate and the ultimately approved (and, likely, even higher) rate.

On the other hand, if AEP Ohio is allowed to charge only the existing rates with no reconciliation, as required by R.C. 4928.141(A), the Companies will be more inclined to accept the PUCO's decision. Thus, by allowing the EDU to charge only existing rates until the Commission makes a decision on an ESP application, the legislature was striking a balance to ensure that a Commission decision after a hearing and deliberation

⁴⁷ It is noteworthy that Section V.E of the Companies' Application cites no statutory support for their proposition.

was not so easily put aside. Although an EDU may reject a Commission decision regarding an ESP, consumers would not have to bear the costs. Therefore, the limitation on cost recovery was deliberate to temper the EDU from making repetitive filings.

In order to protect AEP Ohio's customers from unlawful rate increases (i.e., rate increases not allowed under the statute), the PUCO should reject AEP Ohio's Section V.E Plan and its proposed modifications to the Staff's Alternative Plan. Instead, the Commission should continue the Companies' existing rate plan, as the statute requires.

B. The PUCO Should Protect Customers by Rejecting the Staff's Alternative Plan and by Following the Requirements of S.B. 221.

The Staff's Alternative Plan is also inconsistent with R.C. 4928.141(A). The Staff asserts that its proposed short-term ESP proposal merely continues the rate plan as required by the statute.⁴⁸

To the contrary, the Staff's Alternative Plan unlawfully modifies AEP Ohio's rate plan. Specifically, the PUCO Staff proposes the following modifications to SSO rates in tariffs at July 31, 2008 that are inconsistent with the statute:

- The Companies would be allowed to automatically increase their generation rates to customers by 3% for CSP and 7% for OP. Under the existing rate plan, these increases were authorized only through December 31, 2008.
- In addition to these automatic rate increases, the Companies would be allowed a full additional 4% generation rate increase. Under the existing rate plan, the increase – which allows the Companies to recover certain costs⁴⁹ – is not assured; the Companies must justify the increase, and the increase could range from 0% to 4%. The PUCO Staff proposal, however, would automatically give AEP Ohio the maximum increase without requiring the Companies to

⁴⁸ See Tr. Vol. I at 96-97 (Hess).

⁴⁹ As discussed in Section II., these costs include increased expenditures for environmental requirements, security, taxes, new generation-related requirements, and customer shopping.

justify the increase. This proposal contradicts the terms of the Companies' existing rate plan and the Commission Order approving it, and is thus unlawful under R.C. 4928.141(A).

- The Mon Power load would be priced at the market price recommended by OCC witness Lee Smith. This PUCO Staff recommendation would modify CSP's July 31, 2008 Power Acquisition Rider ("PAR") rate. The PUCO Staff recommends that the PAR rate "be quantified based upon the rate by Smith minus what they're currently paying."⁵⁰ A change to CSP's July 31, 2008 PAR rate will occur if it is quantified upon the market price as Mr. Hess describes. And that change will result in a rate increase, which Mr. Hess has quantified as \$32 million on an annualized basis.⁵¹ Mr. Hess' proposal takes Ms. Smith's recommendation out of context and is inappropriate. Her recommendation addressed a long-term ESP, and was not designed to be included in a proposal for a short-term ESP that must comply with R.C. 4928.141(A). Moreover, there are many elements to the market price proposed by Ms. Smith that are just not applicable to the Mon Power load transaction.⁵²
- The Ormet load would also be priced at the market price recommended by OCC witness Lee Smith. This PUCO Staff recommendation would modify the SSO generation rates in tariffs in effect on July 31, 2008, since those SSO rates had no rate or rider allowing collection of the market differential. Instead, AEP Ohio was allowed to amortize the differential against a regulatory liability.⁵³ Under the PUCO Staff's proposal, the rates charged CSP and OP customers would include the calculated amount of Ormet delta revenues, which is estimated to be \$43.9 million for each company.⁵⁴ Mr. Hess' proposal takes Ms. Smith's recommendation out of context and is inappropriate.⁵⁵ Her recommendation regarding Ormet was not designed to be included in a proposal for a short-term ESP that must comply with R.C. 4928.141(A).

⁵⁰ See Tr. Vol. 1 at 101 (Hess).

⁵¹ See id. at 152 (Hess).

⁵² See id. at 106 (Hess).

⁵³ OCC Ex. 3 (Hixon Rebuttal) at 8-9.

⁵⁴ See Tr. Vol. 1 at 152-154 (Hess).

⁵⁵ See id. at 106 (Hess).

- The RTC rider for CSP would be eliminated. While regulatory transition charges are to be discontinued, CSP's RTC is part of the SSO generation rates in tariffs at July 31, 2008, and thus as part of the rate plan, must continue during the interim period for a short-term ESP to comply with R.C. 4928.141(A).⁵⁶

The PUCO Staff proposal offers no rationale or statutory support for its modifications to the SSO generation rates in effect on July 31, 2008. Instead, the modifications are a hodgepodge of changes to the existing rates under the Companies' rate stabilization plan and alter the Companies' existing rate plan, rather than continuing the rate plan, as required by statute.

The Commission should also reject the PUCO Staff's recommendation to "leave the line extension policy in place." The line extension policy and charges are distribution related matters, and are not part of the Companies' rate plan.⁵⁷ To "leave" the Companies' line extension charges in place would allow the Companies to continue to bill customers monthly surcharges that are scheduled to end on December 31, 2008. To do so also is contrary to the Commission's precedent on this issue as evidenced by the First Energy Opinion and Order.⁵⁸

The Commission should reject the Staff's Alternative Plan. The Staff proposal changes, not continues, the Companies' existing rate plan. The proposal would give the Companies increases in their generation rates – increases the Commission did not deem reasonable to automatically grant in the 04-169 Order. Nor have the Companies proven

⁵⁶ OCEA's members recognize that they must accept the adverse consequences of what the law states, although both the AEP and the PUCO Staff plans would eliminate these charges.

⁵⁷ OCC Ex. 3 (Hixon Rebuttal) at 10.

⁵⁸ *In re: First Energy Application*, Case Nos. 07-548-EL-ATA et al., Order (July 11, 2007). The line extension charges for the FirstEnergy companies and AEP Ohio were approved together in 2002 by the Commission in an Order issued in Case No. 01-2708-EL-COI on November 7, 2002.

that such increases are needed. R.C. 4928.141(A) provides that, for short-term ESP purposes, the rate plan in effect on July 31, 2008 “shall continue” until the Commission authorizes a new SSO. Simply stated, the SSO generation rates in tariffs in effect on July 31, 2008, therefore, should remain in effect.

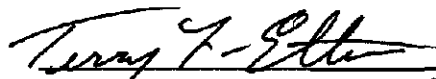
Changing the existing rates, either by increasing or decreasing them, for purposes of a short-term plan would be contrary to R.C. 4928.141(A). As OCC witness Ms. Hixon explained, the Commission should authorize AEP Ohio to charge customers the standard service offer rates in tariffs in effect on July 31, 2008 until a new SSO is approved, with no reconciliation or true up. Such an approach is consistent with continuing the Companies’ existing rate plans, as is required under R.C. 4928.141(A).

V. CONCLUSION

The question before the Commission is a legal question only: What does the law provide for in the event that the Commission fails to render an Order on the ESP within 150 days of the filing of an application? The short-term ESP proposals proffered by AEP Ohio and the PUCO Staff would unlawfully change customers’ standard service offer rates in tariffs in effect on July 31, 2008, either in the near term (the PUCO Staff’s proposal) or the long term (AEP Ohio’s proposal). The Commission should reject both proposals and instead should continue the Companies’ standard service offer rates in tariffs on July 31, 2008, without changes, as required by R.C. 4928.141(A).

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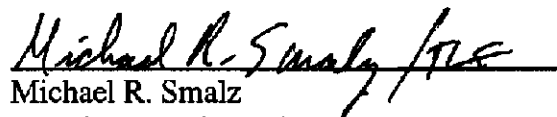
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing the OCEA's Brief on a 1/1/09 Plan was served via electronic service and by first class United States Mail, postage prepaid, to the persons listed below, on this 3rd day of December 2008.


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