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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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-~~917~~ 918-EL-SSO

BRIEF OF THE OHIO MANUFACTURERS' ASSOCIATION ON THE ISSUE OF A SHORT TERM ELECTRIC SECURITY PLAN FOR COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

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I. INTRODUCTION

The issue here addressed is: How might the Commission appropriately respond if it is unable to act upon the Companies' proposed long term ESP (by its acceptance, modification, or rejection) upon the expiration of the Companies' current standard service tariff offerings, dated to expire December 31, 2008? Both the Companies, the Staff (by its witness Mr. Hess) and various intervenors have advanced different proposals to address this issue. In this brief, the Ohio Manufacturers' Association ("OMA") respectfully submits that there is but one response to this issue, and that response has been dictated by the sound judgment of the Ohio General Assembly.

Section V.E. of the companies' application, filed July 31, 2008, specifically requested, *as part and parcel of the ESP*:

> * * * a provision that 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. It is proposed that the amount to be recovered under the provision of the ESP would be recovered over the remaining billing months in 2009, with a true up, if necessary, in the first quarter of 2010.

The companies' application makes clear the reasoning for seeking approval of such a *rider*:

> Section 4928.14(C)(11), Ohio Revised Code, requires the Commission to issue an order for an initial ESP application not later than one hundred fifty days after the application is filed. The companies believe that the Commission intends to take all necessary actions in order to comply with this requirement. *However, in the event that the Commission is unable to meet the statutory requirement, the companies include as part of its ESP a provision that establishes a one time rider* ...

Emphasis supplied.

It is undisputed that, by Attorney Examiner's entries issued August 5, 2008 and September 5, 2008, hearings on the merits of these applications (including Section V.E) were scheduled to begin on November 5, 2008, and then rescheduled to begin November 17, 2008. Then, on September 24, 2008, the companies filed a motion to approve Section V. E., *for which the companies' applications had already sought the Commission's "approval"* ... which was to be the exclusive subject of the *segmented* evidentiary hearings commencing November 17, 2008, or as characterized by Staff witness Hess, the "Alternative 1/1/09 Plan."

While the companies attempt to make much of the fact that intervenors in these dockets (including the OMA) did not respond to their purported September 24, 2008 "motion" for approval, such is a hollow sword the companies thrust before the Commission. While these Companies' resources may be such as to allow them to file repetitive requests for approval of the

same proposal, intervenors' resources are limited in responding to such repetitive proposals – whether expressed in the form of an "application" or a "motion." This is particularly so where, as here, the very subject of the Companies' application Section V.E., Staff Witness Hess' "Alternative 1/1/09 Plan," and IEU-Ohio Witness Murray's[1] alternative were scheduled for evidentiary hearings commencing November 17, 2008. Rather than respond to the duplicative September 24, 2008 "motion" of the Companies, the OMA and other intervenors properly sought to respond to the Companies' Section V.E. proposal via the evidentiary hearings scheduled thereon and arguments requested to be presented in post-hearing briefs, as represented herein.

Stated differently, the intervening parties' failure to respond to the Companies' repetitive filing of September 24, 2008 is, in no way, indicative of the parties' accord with such filing.

II. ARGUMENT

A. SECTION V.E. OF THE COMPANIES' APPLICATION, STAFF WITNESS HESS' "ALTERNATIVE 1/1/09 PLAN" AND OEG'S ALTERNATIVE PROPOSAL ARE UNLAWFUL AND CAN NOT BE APPROVED

On November 14, 2008, counsel for the OMA provided counsel for all parties and the Commission's Staff[2] detailed, advanced, electronic notice of the oral Motion to strike OMA would be making at the outset of the first day of hearings in these dockets on November 17, 2008.

As reflected in the record transcript of the November 17, 2008 hearing, the OMA sought to strike all references to Section V.E. and alternative proposals (and all testimony relating thereto) as being contrary to law insofar as these alternative proposals: (1) purport to provide the Commission with time beyond 12/31/08 in which to authorize an ESP, violative of the express

[1] IEU-Ohio subsequently "withdrew" that portion of its Witness Murray's testimony that was the subject of OMA's Motion to Strike.

[2] As well as the presiding Attorney Examiners.

dictates of SB 221, and (2) that Section 4928.141 of the Revised Code legally mandates the continuation of rates existing on the date SB 221 became law (July 31, 2008) on and after January 1, 2009[3] should the Commission fail to issue a timely ESP Order. In addition, it was observed that *only the Commission* has the ability to determine whether it will issue a "timely" Order on the Companies' ESP – and not those parties contemplating otherwise and -- as a result, advocating "alternative proposals."

In addition to the legal basis supporting the subject Motion to strike, it was the objective of the movant to avoid the expenditure of considerable resources of all parties (including the Commission) in conducting extensive *segmented* hearings into such interim proposals that are, on their face, unlawful. When that objective was overcome by the Attorney Examiner's determination that evidence and argument on such interim proposals would be received, the immediate certification of such ruling to the Commission became of questionable value for two reasons. First, under the Attorney Examiner's ruling the hearings on such proposals were going to proceed in any event. Second, the Attorney Examiners indicated an early ruling on such interim proposals (including their lawfulness) would be promptly forthcoming from the Commission itself, as briefs on this narrow issue would be required to be filed on December 3, 2008 (well in advance of the yet to be determined due date for briefs on the merits of the long term ESP) providing for an expeditious decision by the Commission itself on the lawfulness of these "alternative" proposals.[4]

B. SECTION V.E." OF THE COMPANIES' ESP, MR. HESS' "ALTERNATIVE 1/1/09 PLAN," AND OEG'S ALTERNATIVE PROPOSAL HAVE NOT BEEN DEMONSTRATED TO BE JUST OR REASONABLE.

[3] Those rates would presumably be in effect the preceding day, December 31, 2008.

[4] No one suggests that the lawfulness issue here raised, by the OMA, over the first time interpretation of the newly enacted SB 221 does not present a new or novel issue of significance worthy of address by the Commission itself.

1. The Companies' Interim Plan.

One need not look beyond the cross-examination of Companies' Witness Roush to appreciate the fact that the Companies paid scant attention to the issues its Section V.E. implementation would create beyond the obvious: the Companies' seeming collection of additional revenues that would not be collected in the absence of such a Section. Mr. Roush's prefiled testimony, the only direct testimony filed purportedly in support of the Section V.E. proposal, simply "paraphrased" that Section in four brief sentences, without attempting to characterize the interim plan, let alone explain how it would work or what implications it might hold. He acknowledged his Section V.E. proposal was "asymmetrical"[5] (in that it provided for only the Companies' "recovery" of additional revenues and not customer "refunds" should the ultimately approved and accepted ESP provide for lesser revenues than those generated by "the rate plan" in effect on July 31, 2008.[6] When asked to assume there is no reconciliation (as in the Hess alternative 1/1/09 Plan) Company witness Roush could not state what would be "the standard" for such interim rates, stating instead: "That's a good question. I don't know." When asked whether the Companies' proposed kWh reconciliation of its interim proposal would be by customer class or rate schedule class, he simply replied, "I haven't gotten that far."

Mr. Roush did not even attempt to explain the basis upon which the Companies' customers' revenue obligations would be established over its proposed "interim period" – which its Section V.E. would allow to be extended throughout the entire year 2009 -- with a *"true up, if necessary, in the first quarter of 2010."* Stated differently, all the company is saying is "Give Us

[5] A term often used by the Company to criticize features of Intervenors or Staff proposals.

[6] One must not be lured into the belief that the legislature sought to assure the "stability" of Ohio's electric utility industry by simply providing it an *ever-increasing* revenue stream. Such "stability" can also be provided by assuring the industry a "constant" stream of *non-increasing* revenues.

The Money: and we will figure out the amount later (the reconciliation) and collect it as late as the first three months of 2010.

2. Mr. Hess' "Alternative 1/1/09 Plan"

Mr. Hess' "Alternative 1/1/09 Plan," initially characterized by him as a "rate stabilization plan" until he struck the word "stabilization" from the characterization[7] in his prefiled testimony, opposes the Companies' Section V.E. proposed interim plan, apparently because of the magnitude of revenue increase it would ultimately provide the companies. Instead, staff Witness Hess would recommend authorizing generation based rate increases of 7% for Columbus Southern Power and 11% for Ohio Power Company over the un-defined "Interim" period, irrespective of the level of wholesale generation pricing being experienced, and whether such prices were increasing or decreasing from the levels experienced in 2008.[8] Under the Staff's proposed percentage increase recommendation Columbus Southern Power customers would receive an "interim" annualized rate increase of $73.6 million in addition to another $32 million for the Monongahela Power transaction (which the Companies did not themselves seek) totaling a $105.6 million rate increase. Similarly, customers of Ohio Power would sustain a rate increase of $111.7 million (11%) in addition to $43.9 million relating to Ormet (which the companies did not themselves seek). These Staff recommended increases to the rates which were in effect on July 31, 2008, are admittedly neither cost or market based,[9] nor do they recognize the economic conditions that will exist in Ohio during the defined "interim" commencing 1/1/09. The Staff recommendation simply provides the Companies with an additional $262.6 million in annualized "interim" revenues. Staff's proposal has no basis beyond its desire to provide these Applicants a

[7] Staff Exhibit No. 1, p. 9, line 8.

[8] Not surprisingly, these rate increases are predicated upon the identical magnitude of the increases authorized under the Commission's rate "stabilization" plan Mr. Hess now disavows.

[9] Mr. Hess agreed the market rate per MWh is today in the area of $56, not the $71 he used for pricing the wholesale market as a base for his recommendation.

rate increase in some amount less than what Applicants seek. Staff falls back on the same percentage increases granted these Companies during the rate stabilization period as the "base" for its recommended 1/1/09 rate increase. Its recommendation is not supported by the law, or fact, or logic.

3. Responses to the Hess-Staff 1/1/09 Proposal

Responding to the Hess 1/1/09 Interim Proposal, the Companies offered up a witness not previously supporting the companies' own Section V.E. proposal, J. Craig Baker ("Limited" Rebuttal testimony of J. Craig Baker). Mr. Baker asserted his continuing preferences to be in the following order: (1) The Companies' long term ESP authorization timely issued; (2) The Companies' interim Section V.E. proposal; and lastly, (3) the Hess proposal as modified by him. The modifications proposed by Mr. Baker relate to the absence of the companies' proposed fuel adjustment clause revenue generating capability and the level of the POLR charge Staff Witness Hess proposed. Mr. Baker starts with the erroneous presumption "that current fuel costs are *not* reflected in current rates,"[10] notwithstanding the fact the companies' own expert witness, Dr. Makhiya testified CSP's return on equity was 23.7% and Ohio Power Company's return on equity was 10.2% for 2007. By definition, the return on equity is *after* all operation; maintenance, fuel and debt costs are paid. There is no evidence presented by these Companies to demonstrate that either the current or those proposed rates by Staff will not provide the Companies more than adequate return on equity "head room" for the Company to recover all of its experienced costs – including reasonable fuel costs. It is only the Companies' exaggerated projections of future fuel costs that might (weakly) suggest its non-recovery of such fuel costs. It is worthy to note that the Company projects a whopping 24% one year increase in 2009 fuel

[10] Company Exhibit No. 2, Limited Rebuttal testimony of J. Craig Baker, page 6, line 12.

costs over 2008 fuel costs for Columbus Southern Power[11] alone, and 100% increase in their proposed fuel adjustment clause over the three year ESP period.

Similarly the proposed non-market/non-cost based POLR risk/reward based charge increase of 642% for Columbus Southern Power ($93.6 million increase) and 54% for Ohio Power ($21.2 million increase) constitute the second largest component of the Companies' total 2009 increase ($114.8 million of the total $463 million 2009 rate increase). The only rationale tendered to support these outlandish POLR charge increases is that some other utilities (with higher shopping risks) have higher POLR charges than the Companies' *current* POLR charges. Simply stated, the Companies' prowess in conducting mathematical exercises to arrive at future cost levels designed exclusively to support 50% rate increases in today's economy falls short of the mark in meeting its burden of proof in this proceeding. The Companies' witness Baker proposed to halve these 2009 increases to 321% and 27% fail to remedy their basic flaw: the lack of any support.

Indeed, Mr. Baker's articulated favoring of the Companies' own interim proposal over that offered by Mr. Hess is, itself, most revealing of the Companies' ability to continue to provide reliable electric service under their current rates (those in effect on July 31, 2008) without financial peril to its debt or equity holders. This is seen in Mr. Baker's rejecting Staff's offer of an immediate annualized rate increase on January 1, 2009 of almost $200 million in favor of its own proposal to maintain existing rates subject to a "true up," *retroactively collecting increase simply not collected in the interim!* The express language of *SB 221 does not allow rate*

[11] DMR Exhibit p 1 of 2: FAC increase of $147,939,677 over 2008 fuel costs of $604,035,556. A $66.6 million increase in fuel costs is projected for Ohio Power (12%), DMR, p. 2 of 2. This totals a FAC based increase of $214 million. As revealed in OMA's cross-examination of Company witness Roush, while the Company is (by deferred accounting) capping its overall annual increases to 15%, its FAC revenues are "projected" to increase 100% in the next three years – while other commodity prices are plummeting.

increases to be placed in effect (in the absence of a Commission Order on the Companies' long term ESP) *subject to collection at a later date.*

In the same vein, the interim recommendation of the Ohio Energy Group ("OEG") must meet the same fate. While perhaps well intended as a consumer-oriented proposal, the OEG proposal seeks the maintenance of the Companies' current rates (irrespective of whether such rates are different from those rates in effect on July 31, 2008), subject to subsequent adjustment to the level ultimately authorized by the Commission. OEG's rationale is seemingly predicated upon the belief its case in opposition to the Companies' long term ESP will produce such a substantial reduction in the Companies' requested rate increase that the resulting rates will be both reasonable and acceptable to its members – notwithstanding the retroactive nature of its proposal.

While perhaps superficially appealing, based upon the premise that what is reasonable for the long term must be reasonable for the short term, the OEG proposal flies in the face of Senate Bill 221. It also fails to appreciate the impact upon customers of "*tomorrow's collection of yesterday's rate authorizations.*" While OEG opposes (as does virtually every other party in this proceeding – save the Companies) additional "deferrals," OEG's acceptance of the Companies' proposed Section V.E. is itself a deferred collection of an authorized (retroactive) rate increase. While perhaps well intended, OEG's proposal is contrary to the dictates of SB 221 and ill-advised in its application during the current depressed economic conditions likely to exist throughout 2009.

C. THE COMMISSION SHOULD FOLLOW THE LAW.

The OMA respectfully submits that the Commission should act – as its Chairman stated at the Commission's October 12, 2008 Open Meeting considering First Energy's "interim plan":

"We will follow the law." The OMA submits that each of these 1/1/09 proposals should be rejected for the reasons stated by OCC witness Hixon in her rebuttal testimony, at page 6. OCC Exhibit No. 3.

In accepting the recommendation advanced herein the Commission would be complying with the dictates of SB 221 and implementing the actual rates recommended by the Companies and OEG – only without their "true up" proposals. As reflected in IEU Exhibits No. 3 – 8 such a recommendation would not affect these Companies in their ability to fund ongoing operations, including capital expenditures that may be necessary to meet tomorrow's needs for electricity.

The Commission need not issue an Order authorizing the implementation of this recommendation. All that is required is an Entry stating SB 221 requires such recommendation be implemented.

Respectfully submitted,

The Ohio Manufacturers' Association

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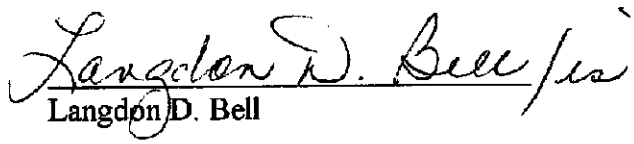
CERTIFICATE OF SERVICE

I hereby certify that this 3rd day of December 2008, a copy of the foregoing Brief was served on all parties of record via electronic mail.



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