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December 30, 2008

VIA FACSIMILE AND FEDERAL EXPRESS

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

Re: Case Nos. 08-917-EL-SSO and 08-918-EL-SSO

Dear Sir or Madam:

Enclosed for filing please find an original and 20 copies of The Commercial Group's Initial Post-Hearing Brief in the above-referenced cases.

Also enclosed are two extra copies of the document to be date-stamped and returned to me in the enclosed, self-addressed, Federal Express envelope. Please do not hesitate to contact me at the number above if you have any questions.

Thank you for your assistance in this matter.

Sincerely,


Douglas M. Mancino

Enclosures

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Technician 2 Date Processed DEC 30 2008

BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Columbus Southern Power Company for)	
Approval of its Electric Security Plan; an)	Case No. 08-917-EL-SSO
Amendment to 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 Security)	Case No. 08-918-EL-SSO
Plan; and an Amendment to its Corporate)	
Separation Plan)	

INITIAL POST-HEARING BRIEF OF THE COMMERCIAL GROUP

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Dated: December 30, 2008

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Company for Approval of its Electric Security)	Case No. 08-918-EL-SSO
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Separation Plan)	

INITIAL POST-HEARING BRIEF OF THE COMMERCIAL GROUP

COMES NOW, Wal-Mart Stores East, LP, Sam's East, Inc., and Macy's, Inc.

(collectively, the "Commercial Group"), by and through counsel, files this Initial Post-Hearing Brief in the above-captioned proceeding. As discussed below, the Commercial Group respectfully requests that the Public Utility Commission of Ohio ("Commission") deny the application for an electric security plan, as filed, and modify the plan as discussed herein.

I. INTRODUCTION

On July 31, 2008, Columbus Southern Power Company's ("CSP") and ("Ohio Power Company") (collectively, "American Electric Power" or "AEP") filed an electric security plan ("ESP") application with the Public Utilities Commission of Ohio ("Commission") for review and approval pursuant to Amended Substitute Senate Bill 221 ("SB 221"). Under SB 221, an electric distribution utility can establish an SSO by applying to implement a market rate offer ("MRO") pursuant to Revised Code Section 4928.142, or a electric security plan ("ESP") pursuant to Revised Code Section 4928.143. In its application, AEP proposed an ESP, which addressed a large range of issues that proposed substantial revisions to the terms and conditions

of its service. In reviewing AEP's application, SB 221 places the burden on the electric distribution utility to demonstrate that, in the aggregate, its proposed ESP is superior to an MRO that satisfies the provisions of Section 4928.143 of the Revised Code.

In determining whether AEP has met its burden of proof, the Commission may appropriately review whether the proposed ESP ensures the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service as provided in SB 221.¹ SB 221 also provides that in reviewing certain proposed cost recovery mechanisms, AEP must demonstrate to the Commission that such costs are prudently incurred,² and that its proposal will not result in significantly excessive earnings as compared to other comparable similarly situated companies, including utilities.³

Based on the requirements and principles of SB 221 and the record in this proceeding, AEP has failed to meet its burden of proof. Accordingly, the Commission should deny AEP's ESP application as filed, and should modify AEP's proposed ESP as discussed herein. The Commercial Group's failure to address any provisions of AEP's ESP should not be considered as an approval or an endorsement of such provisions. Further, the Commercial Group reserves its rights to address any issues not addressed herein in response to any parties' briefs through its Reply Brief in this proceeding.

¹ See SB 221, Ohio RC § 4928.02. SB 221 also sets forth general policies for Ohio including, the policy to: (1) ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; (2) ensure diversity of electricity supplies, encourage innovation and market access for cost-effective supply and demand-side retail electric service; and (3) ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa. *Id.* at § 4928.02(A) – (N).

² See SB 221, Ohio RC § 4928.143(B)(2)(a).

³ See SB 221, Ohio RC § 4928.143(E).

II. AEP HAS FAILED TO DEMONSTRATE THAT ITS PROPOSED ESP SATISFIES THE REQUIREMENTS OF SB 221

AEP has failed to demonstrate that its ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under a MRO that satisfies the provisions of SB 221. Indeed, as AEP indicates in its application, in making its comparison between an ESP and an MRO (to demonstrate whether its ESP meets the requirements of SB 221) certain assumptions were made regarding the appropriate market price for the three-year ESP.⁴ Based on these assumptions, AEP argues that, in the aggregate, its ESP is more favorable than the results of an MRO. For example, in making its comparison between an ESP and an MRO, AEP made certain assumptions regarding market price projections, the phasing in of rates, and certain adjustments to the non-market based portion of AEP's rates.⁵ However, as demonstrated by the record in these proceedings, AEP bases its comparisons on inappropriate assumptions, and when its proposed ESP is considered without these assumptions, the record clearly demonstrates that AEP's proposed ESP fails to satisfy the requirements of SB 221.

A. AEP's Proposed Fuel Adjustment Clause and Deferral of Certain Fuel Adjustment Clause Is Contrary to the Principles of SB 221

In reviewing AEP's proposed ESP, SB 221 provides general principles that establish the policies of the state of Ohio. Specifically, Section 4928.02 of the Revised Code provides that it is the policy of the state of Ohio to:

- (1) ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (2) ensure the availability of unbundled and comparable retail electric service;
- (3) ensure diversity of electricity supplies and suppliers;

⁴ See *Columbus Southern Power Company's and Ohio Power Company's Application* ("AEP's Application") at pp. 19 – 20 (Jul. 31, 2008).

⁵ *AEP Application* at p. 20.

(4) encourage innovation and market access for cost-effective supply and demand-side retail electric service including, but not limited to, demand-side management (DSM), time-differentiated pricing, and implementation of advanced metering infrastructure (AMI);

(5) encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems in order to promote both effective customer choice and the development of performance standards and targets for service quality;

(6) ensure effective retail competition by avoiding anticompetitive subsidies;

(7) ensure retail consumers protection against unreasonable sales practices, market deficiencies, and market power;

(8) provide a means of giving incentives to technologies that can adapt to potential environmental mandates;

(9) encourage implementation of distributed generation across customer classes by reviewing and updating rules governing issues such as interconnection, standby charges, and net metering; and

(10) protect at-risk populations including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.⁶

Under the provisions of SB 221, AEP's proposed fuel adjustment clause ("FAC") and proposed deferrals are contrary to basic principles of SB 221. As demonstrated in the record, AEP's proposed FAC will allow for non-energy related costs to be recovered through the FAC, which will result in anticompetitive subsidies and rates which are not just and reasonable.⁷ From a rate design perspective, in order to ensure that costs are just and reasonable (*i.e.*, that such costs encourage cost-effective and efficient access to information, promote both effective customer choice, and ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service) non-energy costs should not be

⁶ See SB 221, Section 4928.02 of the Revised Code.

⁷ See *The Commercial Group Exhibit 1, Direct Testimony and Exhibits of Michael Gorman* at p. 4 – 5 ("CG Exhibit 1").

recovered through a FAC, but rather should remain in AEP's non-FAC charges.⁸ Properly allocating such costs will ensure that policies of the state of Ohio are met and will improve price signals for customers, and further ensure effective retail competition by avoiding anticompetitive subsidies.

For example, as recommended by the Commercial Group's witness Michael Gorman, to improve price signals to customers, AEP's proposed FAC should be adjusted to differentiate prices by season and on-peak/off-peak periods, such as a winter (October – May) and a summer (June – September) period, and an on-peak/off-peak period charge, because such price differentiation will encourage energy conservation and demand response programs. In properly allocating and designing rates so that costs accurately reflect the actual cost of service, customers will be able to take concerted actions towards the appropriate conservation measures that will have immediate benefits to the overall system. For these same reasons, AEP's proposed deferrals of certain FAC charges is also inappropriate as it further masks appropriate price signals for customers and creates an impediment for effective retail competition by creating anticompetitive subsidies.

Therefore, as demonstrated in the record, to meet the policies goals of the state of Ohio, AEP's FAC and deferral request, as proposed, should be rejected and modified to include seasonal and on-peak/off-peak variations so that customers can receive more accurate price signals to encourage economic consumption decisions. Additionally, the Commercial Group respectfully requests that the Commission direct AEP to offer a time-of-day FAC rate option in furtherance of the objectives of SB 221.

⁸ *Id.* at pp 4 – 7.

B. AEP Fails to Meet the Burden of Proof to Justify Revisions to its Provider of Last Resort Charge

AEP has also failed to demonstrate that its proposed provider of last resort ("POLR") charge satisfies the requirements of SB 221. Specifically, to justify its increased POLR charge, AEP states that the increase reflects additional risks posed by customers seeking to shop and that the provisions of SB 221 increase such a risk.⁹ However, AEP failed to demonstrate in the record whether the risk actually exists or whether they had appropriately quantified such risks as to justify its proposed POLR charge. In fact, even AEP's own witness notes that in the past eight years, virtually no customer switching has occurred in the AEP Ohio's service territory.¹⁰ Although AEP speculates as to the reasons customers have not sought to stop, AEP did not demonstrate in the record whether the lack of shopping was due to the lack of statutory provisions (such as those found in SB 221) or other impediments inherent in AEP's service territory. Despite the lack of customers seeking to switch, AEP continues to argue that its proposed increased POLR charge is appropriate because of potential increased shopping risks created by SB 221.¹¹

However, even in cross-examination, AEP's witness indicated that no customer studies or surveys were conducted to actually assess or quantify such risks.¹² Accordingly, AEP has failed to meet its burden of proof to demonstrate that its proposed POLR charge is necessary, or that the proposed POLR charge will further the goals of SB 221 to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. Therefore, the Commercial Group respectfully requests that the Commission deny AEP's proposed POLR charge.

⁹ See AEP Exhibit 2A, *Direct Testimony of J. Craig Baker* (Jul 31, 2008) and Transcript Volume X at p. 219, line 17.

¹⁰ See AEP Exhibit 2A, *Direct Testimony of J. Craig Baker* at p. 33, lines 7 – 18.

¹¹ See Transcript Volume X at p. 219, line 17.

C. AEP's Energy Efficiency and Peak Demand Reduction Proposals Fail to Further the Goals of SB 221

Under SB 221, in reviewing whether AEP's proposed energy efficiency and peak demand reduction proposal further the goals of SB 221, the Commission should not only examine the provisions of Section 4928.66 of the Revised Code, but also the overall policy objectives of the state of Ohio. Specifically, the Commission has the ability to review whether AEP's proposals encourage innovation and market access for cost-effective supply and demand-side retail electric service including, demand-side management and time-differentiated pricing.¹³ Under these policies, the record demonstrates that AEP's proposal fails to further the goals of the state of Ohio. In fact, AEP's proposal creates a disparate impediment to encouraging demand-side management opportunities currently available in the market for consumers in Ohio, in favor of AEP's own programs, which have not been demonstrated to be the most cost-effective or beneficial plan for consumers. For example, although AEP objects to allowing customers to participate in PJM Interconnection, LLC ("PJM") demand response programs, because under such programs a customer could receive a payment for being available to curtail (even though they are not actually curtailed), AEP seeks under its own program credit for being able to reduce load (even if such load is ultimately load is not reduced) towards its peak reduction goals.¹⁴ AEP provides no evidence in the record that demonstrates why it is appropriate for AEP to receive credit for being able to reduce or curtail its customers load, while inappropriate for Ohio consumers to be able to receive the same benefit for agreeing to curtail under a PJM demand response program, or why one program should be favored over another.

¹³ See *Transcript Volume X* at p 222, lines 8 – 10.

¹⁴ See Section 4928.02 of the Revised Code.

¹⁵ See *Transcript Volume IX* at pp. 148, line 9 – p. 149, line 5 and AEP Exhibit 1, Direct Testimony of David M. Roush at p. 5, lines 1 – 4.

Specifically, AEP proposes to revise its tariff to explicitly state that AEP's customers wishing to participate in demand-side management programs do so through AEP, and that customers be precluded from participating directly in demand-side management plans offered through the PJM.¹⁵ In fact, although AEP's own witness recognizes the benefits to consumers of being allowed to participate directly in PJM demand response programs, AEP argues that such participation is inappropriate.¹⁶ In support of its position, AEP argues that such programs, like those offered in PJM, must be designed differently from those offered by AEP.¹⁷ However, AEP provides no further justification for its position, and, in fact, admits that no studies were conducted or performed to compare the demand response programs offered by PJM to the programs offered by AEP.¹⁸ Without such study and analysis, AEP's blanket assertion that demand response programs offered in the wholesale market must be different than those offered by AEP is wholly unsupported in the record.

Furthermore, although AEP wants to preclude customers from having the ability to directly participate in PJM demand response programs, AEP also argues that its overall policy goal is to encourage customers to participate in demand response programs.¹⁹ AEP admits that customer participation in AEP's demand response programs has been minimal.²⁰ However, in determining what revisions should be made to its tariff provisions to encourage customers to participate in AEP's demand response programs, AEP again admits that no inquiry of its customers has been made as the reasons why customers are not electing to participate in AEP's demand response programs. Without such an analysis, AEP again has failed to demonstrate in

¹⁵ See AEP Exhibit 1, *Direct Testimony of David M. Roush* at pp. 6 – 8.

¹⁶ See *Transcript Volume IX* at p. 32, lines 15 – 17, where AEP's witness Roush agrees that PJM's demand response programs can provide grid reliability.

¹⁷ See AEP Exhibit 1, *Direct Testimony of David M. Roush* at pp. 6 – 8.

¹⁸ See *Transcript Volume IX* at p. 47, lines 7 – 12.

¹⁹ See *Transcript Volume IX* at p. 151, lines 10 – 12.

²⁰ *Id.* at pp. 149 – 150.

the record why its proposed energy efficiency and peak demand reduction proposals should be approved. Accordingly, AEP's request to preclude customers from participating in PJM demand response programs should be rejected, and the Commercial Group respectfully requests that the Commission direct AEP to coordinate and cooperate with its consumers in designing energy efficiency and demand response programs that incorporate all available programs that will further encourage customer participation in demand response programs in Ohio.

D. AEP's Significantly Excessive Earnings Test is Unjust and Unreasonable

As discussed extensively in the record, the question of what factors should be included in a significantly excessive earnings ("SEE") test is widely disputed between the intervenors and AEP. Since the conclusion of the hearings in the AEP ESP, the Commission has recognized the importance of the SEE test in its order approving (with modifications) FirstEnergy's electric security plan.²¹ In that order the Commission appropriately stated that, given the importance of the issues involved in determining an appropriate SEE test, "it would be wise to examine the methodology for the excessive earnings test set forth in the statute within the framework of a workshop."²² Further, the Commission noted that the "goal of the workshop would be for the Staff to develop a common methodology for the excessive earnings test that should be adopted for all of the electric utilities and then report back to the Commission on its findings." Based on the Commission's order in the FirstEnergy electric security plan proceeding, the Commercial Group believes that issues of AEP's SEE will be and appropriately should be resolved through the common methodology workshop. Therefore, with respect to the issues regarding AEP's proposed SEE test, the Commercial Group respectfully requests that the Commission indicate that such issues will be reserved for the workshop on a SEE methodology.

²¹ See *Opinion and Order*, Case No. 08-935-EL-SSO at p. 64 (Dec. 19, 2008).

²² *Id.*

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commercial Group respectfully requests that the Commission deny AEP's application as filed, and modify AEP's electric security plan as discussed herein.

Respectfully submitted,



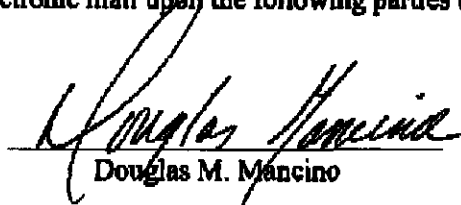
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December 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the "Initial Post-Hearing Brief of The Commercial Group" to be served either via first class mail or electronic mail upon the following parties of record on the 30th day of December, 2008.


Douglas M. Mancino

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