

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Case No. 08-917-EL-SSO

In the Matter of the Application of the Ohio)
Power Company for Approval of its Electric)
Security Plan; an Amendment to its Corporate)
Separation Plan; and the Sale or Transfer of)
Certain Assets.)

Case No. 08-918-EL-SSO

REPLY BRIEF OF THE OHIO HOSPITAL ASSOCIATION

I. INTRODUCTION

The Ohio Hospital Association ("OHA") herewith replies to the briefs filed by all parties on December 30, 2008.

It is worth noting again that OHA members occupy a unique position on the electric grid. Every patient's health (and possibly life) would be at a significantly greater risk were there disrupted and/or unavailable electric service.¹ Furthermore, both Columbus Southern Power Company ("CSPC") and the Ohio Power Company ("OPC") (collectively "AEP") along with OHA member hospitals represent vital components of the communities they serve and have a strong element of mutual dependence. It is from this perspective that the OHA urges the Public Utilities Commission of Ohio ("Commission") to modify AEP's proposed electric security plan ("ESP"). The approximately \$2 billion in additional rates that AEP seeks to extract from the

¹ OHA Exhibit 5, p. 3, lines 5-6.

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Ohio economy² is simply too great a burden to be placed upon the communities that AEP and the members of the OHA serve in common.

In its Initial Brief, the OHA raised the following issues:

- The Commission must not lose sight of the fact that the public interest serves as the overarching consideration in judging the merits of AEP's ESP proposal.
- The unreasonable non-FAC increases must be eliminated, or, at a minimum, reduced as recommended by the Commission Staff.
- AEP should not be allowed to raise its POLR charge because: (1) SB 221 does not mandate that the Commission compensate AEP (or any electric distribution utility) for POLR risks; and (2) AEP seeks to charge all customers the POLR charge even though there is virtually no shopping in AEP's Ohio territories.³
- The distribution service issues addressed in AEP's proposal merit further scrutiny, but not in this accelerated ESP case.
- AEP's proposed enhanced service reliability plan ("ESRP") is deficient and should be rejected because: (1) the "enhanced" overhead line inspection program is not significantly different from AEP's current program; and (2) the "enhanced" vegetation management program actually represents the amount of additional work necessary to allow AEP to catch-up to normal industry standards.
- AEP's proposed Alternate Feed Service tariff requires further scrutiny because: (1) the six-month notice provision is inadequate because it does not allow customers to adequately consider alternatives to full or partial AFS;⁴ and (2) the issue involves the overall management and cost of operating AEP's distribution system, and would better be addressed in AEP's next distribution rate case.
- Schedule NEMS-H is unduly restrictive and should be modified.

II. LAW AND ARGUMENT

A. The unreasonable non-FAC increases must be eliminated, or at a minimum, reduced as recommended by the Staff.

As part of its initial SSO application, and pursuant to Ohio Revised Code Section

("R.C.") 4928.143, AEP submitted its ESP on July 31, 2008 ("Application"). Included in the

² Brief of the Ohio Manufacturers' Association, p. 4.

³ Tr. Vol. XI, p. 46, lines 8-12.

⁴ OHA Exhibit 4, p. 16.

Application was a proposed increase to non-FAC base generation rates by 3% and 7% each year for CSPC”) and OPC respectively.⁵ AEP attempts to justify these automatic, non cost-based⁶ increases on the ground that they are permitted under R.C. 4928.143(B)(2)(e).⁷ AEP, though, ignores the purpose of this statute.

Revised Code Section 4928.143(B) sets forth a laundry list of items an electric utility has the option of including in an ESP application. More specifically, Subsection (B)(2)(e) states that the ESP application may provide for “[a]utomatic increases or decreases in any component of the standard service offer price.”⁸ This is where the argument in AEP’s Brief ends, and it claims the Commission must approve its non-FAC base generation rate increases. In reality, AEP ignores the fact that Subsection (B)(2)(e) deals with the ESP application prior to Commission approval. AEP correctly states that its proposed, automatic, non-FAC base generation rate increases are permissible under the statute. But, simply because the statute permits them does not render them reasonable, nor does it require that the Commission accept or approve them.

While the proposed non-FAC base generation rate increases are indeed contemplated under R.C. 4928.143, the Commission retains the power under R.C. 4928.143(C)(1) to modify, and then approve, components of AEP’s application if portions of the initial ESP are unreasonable. As set forth below (and explained in detail in OHA’s Initial Brief), the automatic, non cost-based non-FAC base generation rate increases are unreasonable – and, as the Staff

⁵ Company Ex. 1, Exhibit DMR-1.

⁶ Tr. Vol. XI, p. 87, lines 9-10. See, also, Tr. Vol. XI, p. 139, lines 6-10. See, also, OCC Ex. 10, p. 9, lines 19-21 (explaining that AEP has “not provided any analysis to justify these percentage increases, and in fact state that these increases are not based on costs”).

⁷ AEP Brief, p. 27.

⁸ R.C. 4928.143(B)(2)(e).

concluded in its brief, “modification to the Companies’ proposal are minimally necessary to make it reasonable.”⁹

Staff witness Cahaan highlights the unreasonableness of AEP’s automatic non-FAC base generation rate increases by noting that they “may have been a reasonable expectation of cost increases at the time that the ESP was contemplated but not now.”¹⁰ The state of Ohio (and nation as a whole) is now in a “financial crisis, we are entering a recessionary, and possibly deflationary, period, and any expectations of price increases need to be revised downwards.”¹¹ (Emphasis added.)

If, however, the Commission deems it appropriate to increase AEP’s non-FAC generation rates by some amount, the OHA could endorse the recommendation of the Commission Staff that the arbitrary non-FAC generation rate increases be cut in half.¹² As explained in the Staff Brief, “this reduction represents a reasonable balance between the Companies’ duties and costs involved in providing electricity, and consumers who are struggling in the midst of a recession.”¹³ Under the current economic conditions, however, it is difficult to imagine how such a purely gratuitous increase in electric rates could be justified.

B. AEP cannot be allowed to recover its POLR costs through nonbypassable charges.

In this case, AEP proposed a “non-bypassable Provider of Last Resort (POLR) Rider”¹⁴ in “recognition of their POLR obligation and the option that all customers have to not shop, to

⁹ Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (“Staff Brief”), p. 2.

¹⁰ Staff Exhibit 10, p. 4, lines 9-10.

¹¹ Id., lines 11-12.

¹² Staff Brief, p. 6. See, also, Tr. Vol. XI, p. 209, lines 9-14.

¹³ Staff Brief, p. 5.

¹⁴ Application, p. 7. Making this POLR charge nonbypassable means that customers will pay the charge regardless of whether they actually shop. Tr. Vol. XI, p. 19, lines 2-5.

shop, and to then return to the Companies' SSO."¹⁵ In reality, AEP proposed a "high percentage increase"¹⁶ to its POLR charge to "compensate" it for the risks that: (1) customers may leave SSO service and (2) customers may return to SSO service.¹⁷ In the AEP Brief, AEP attempts to justify the proposed POLR increases on the grounds that its "POLR charges are the lowest in the State."¹⁸ In essence, AEP seeks to compare its unreasonable POLR charge to the even more unreasonable POLR charges of other electric utilities in the state of Ohio. This cannot serve as the basis for an increase to a POLR charge that SB 221 does not even require. And, as the Office of the Ohio Consumers' Counsel noted, the "fact that the Companies have a POLR charge now does not support their request for one in the ESP."¹⁹

It must be emphasized that, as Staff witness Cahaan noted, "We have had discussions about POLR for a number of years now and I got to admit that the concept is about as slippery as anything I've ever seen in public utility regulation, it changes and morphs depending upon who's talking about it when and how."²⁰ (Emphasis added.) OHA therefore strongly supports the position of the Commission Staff that AEP not be allowed their "slippery" request for a nonbypassable POLR charge.²¹

¹⁵ AEP Brief, p. 42.

¹⁶ Id. In fact, AEP admits that, at least for the Columbus Southern Power Company, the POLR charge represents one of the two largest sources of the overall rate increase proposed by AEP. Tr. Vol. IX, p. 193, lines 3-9. In total, the POLR charge will result in increased POLR revenues of \$93 million between 2009 and 2011 for the Columbus Southern Power Company alone. Id., p. 196, lines 1-3.

¹⁷ Tr. Vol. VI, p. 215 line 24 through p. 216, line 7.

¹⁸ AEP Brief, p. 42.

¹⁹ Post-Hearing Brief Addressing Columbus Southern Power Company and Ohio Power Company Electric Security Plans by the Ohio Consumer and Environmental Advocates ("OCC Brief"), pp. 24-25.

²⁰ Tr. Vol. XII, p. 257, lines 7-12.

²¹ Staff Exhibit 1, p. 4, lines 3-4.

Furthermore, Company witness Baker testified that AEP's current "POLR charge is about one-tenth of a cent per KWh."²² Just recently, however, the Commission denied FirstEnergy's attempt to increase its own POLR charge – and in fact, refused any increase whatsoever.²³ For that reason alone, AEP's proposed POLR charge increase should be denied by the Commission

Finally, as the Ohio Manufacturers' Association Brief poignantly explains:

What make[s] this POLR charge particularly egregious is that, under the company's ESP, the customer is required to pay this charge regardless of whether the customer is even aware of this "right," regardless of whether the customer has any desire to possess this right, and regardless of whether the customer has any intention to exercise this right. And, the companies will continue to collect almost \$115 million – year after year – even if not one single customer were to "shop!"²⁴

Along these same lines, the Ohio Energy Group's ("OEG") Brief persuasively noted the POLR charge is unreasonably imposed on "all customers, whether or not they want to 'purchase' the option."²⁵ In essence, the proposed POLR charge increase represents a **rather stiff premium for utility customers to pay when few customers have actually shopped in the AEP Ohio service territories since the onset of direct access.**²⁶ (Emphasis added.)

The OEG cogently notes that "if customers elect to waive their rights to shop during the three year ESP term, then there is **no risk** to the Companies from customer switching and no

²² Tr. Vol. I, p. 188, lines 6-9. See, also, Limited Rebuttal Testimony of J. Craig Baker, November 14, 2008, p. 8, line 1.

²³ *Ohio Edison Company, Cleveland Electric Illuminating Company and Toledo Edison Company*, Case No. 08-935-EL-SSO (*Opinion and Order* dated December 19, 2008), p. 28.

²⁴ Brief of the Ohio Manufacturers' Association on the Columbus & Southern Power Company and The Ohio Power Company's Electric Security Plan ("OMA Brief"), p. 8.

²⁵ Brief of Ohio Energy Group on Long Term ESP ("OEG Brief"), p. 17 [explaining that over the "three-year term of the ESP, the Companies are proposing that each customer be required to purchase an option that will give such a customer the right (in economic terms) to either leave SSO for a lower market price or return from the market to a lower SSO price"]. See, also, Tr. Vol. I, p. 188, lines 15-16.

²⁶ Kroger Exhibit 1, p. 11, lines 6-14. Even AEP acknowledges that there is virtually no shopping in AEP's Ohio territories. Tr. Vol. XI, p. 46, lines 8-12.

basis for the companies to impose the POLR option charge.”²⁷ Simply stated, “if a customer decides to not buy the ‘option,’ then there should be no charge.”²⁸ OHA supports OEG’s recommendation that the POLR charge should be waived for ESP customers willing to make a three-year binding commitment to waive their shopping rights.²⁹

C. The distribution service issues addressed in AEP’s proposal merit further scrutiny, but not in this accelerated ESP case.

OHA strongly agrees with the Commission Staff that the companies be required to file a separate distribution rate case to address the distribution-related issues in AEP’s proposed ESP. Both the OHA and Commission Staff identified similar justifications for a separate distribution rate case, including the following:

- AEP is due because the last distribution rate case filed by the Columbus Southern Power Company was 17 years ago, and the last one for the Ohio Power Company was 14 years ago.³⁰
- A distribution rate case is necessary to publicly discuss AEP’s distribution system, which has been scrutinized in recent years.³¹
- The Commission should not force distribution-related issues into this ESP proceeding when the Commission would be better served doing so in the context of a separate rate case. In fact, the Commission did just that in FirstEnergy’s recent ESP case – Case No. 08-935.³²

Furthermore, the Commission Staff identified two additional (and very persuasive) reasons warranting a separate distribution rate case:

²⁷ OEG Brief, p. 18.

²⁸ Id.

²⁹ Id.

³⁰ OHA Brief, pp. 18-19 and Staff Brief, p. 8. In the past 15 years, however, the electric distribution industry has undergone tremendous changes, including the fact that AEP “unbundled the rates from a vertically integrated utility to a distribution utility.” Staff Exhibit 1, p. 6, lines 10-11.

³¹ OHA Brief, p. 18 and Staff Brief, p. 7.

³² OHA Brief, pp. 17-18 and Staff Brief, p. 8. The Commission explained that it “declines to resolve in this [ESP] case the substantive issues of the FirstEnergy Distribution Rate Case.”

- The “terms and conditions of the individual companies’ tariffs are different and should be re-written to be consistent with each other.”³³
- A separate distribution rate case would “give parties an opportunity to fully consider” AEP’s corporate separation plan.³⁴

Therefore, OHA supports the recommendation of the Commission Staff that AEP “file a base rate case in 2009 to recover the costs” associated with the various distribution-related programs in its ESP proposal.³⁵

D. AEP’s proposed Alternate Feed Service tariff requires further scrutiny – in a separate distribution base rate proceeding.

AEP’s Brief identifies alternate feed service (“AFS”) as part of the tariff revisions included in its ESP Application. But, AEP fails to provide a justified reason for the Commission to adopt the AFS tariff schedules as proposed. In fact, AEP simply offered the unsupported assertion that the Commission should adopt the AFS schedules because they are “reasonable.”³⁶ This is not enough to warrant approval of these tariff provisions in this proceeding.

It must be noted that, although the OHA generally supports AEP’s efforts regarding the AFS schedules, and does not take issue with the overall structure of the proposed AFS tariff provisions, OHA does take issue with two aspects of AEP’s proposal: (1) the inadequacy of the six-month notice provision;³⁷ and (2) the treatment of AFS in this significantly truncated proceeding.³⁸ For these simple reasons, the Commission should defer any decision regarding the proposed AFS tariff schedules until AEP’s next distribution rate case

³³ Staff Brief, p. 8.

³⁴ Id.

³⁵ Staff Exhibit 1, p. 5, lines 18-21. See, also, Tr. Vol. XIII, p. 78, lines 16-21, and p. 81, lines 22-23.

³⁶ AEP Brief, p. 127.

³⁷ For a more detailed discussion of this problem, see page 22 of OHA’s Initial Brief.

³⁸ For a more detailed discussion of this problem, see page 23 of OHA’s Initial Brief.

E. Schedule NEMS-H is unduly restrictive and should be modified – in a separate distribution base rate proceeding.

AEP recognizes in its Initial Brief that one of the new tariff provisions in its ESP application relates to SB 221's requirements for hospital-specific net metering. More specifically, AEP introduced a "new Net Energy Metering Service Schedule for hospitals."³⁹ By virtue of the fact that hospitals are required by law to maintain an emergency generation system,⁴⁰ OHA member hospitals are keenly interested in participating in the net metering programs of electric distribution utilities. AEP's Brief, however, downplays (and actually ignores) OHA's concerns that certain provisions of the net metering tariff are flawed. A detailed explanation of these flaws is set forth in OHA's Initial Brief.⁴¹

Regardless of OHA's concerns with the net metering tariff, the bottom line is that AEP fails to provide this Commission with a justifiable reason for addressing the net metering tariff in this expedited ESP proceeding. Notably, the Commission Staff recommended that AEP "withdraw their proposed net metering tariffs and re-file versions consistent with the new requirements either after the [new net metering] rule becomes effective, or together with its next base rate case application, whichever comes first."⁴² OHA agrees with this recommendation, but strongly suggests that proposed Schedule NEMS-H be addressed in a separate distribution rate case.

³⁹ AEP Brief, p. 127.

⁴⁰ OHA Exhibit 5, p. 2.

⁴¹ These flaws include: (1) the net metering schedules contain facility ownership requirements (i.e. that "generation facilities be owned and operated by the hospital customer generator") that have no basis in law, OHA Exhibit 4, pp. 8-10; and 2) AEP's payment structure for electricity delivered into its distribution system through a net metering arrangement may not properly reflect the benefits received by AEP through the net metering arrangement, particularly with respect to avoided transmission costs. *Id.*, p. 12.

⁴² Staff Brief, p. 25.

III. CONCLUSION

For better or worse, AEP, OHA's member hospitals, Ohio businesses, and their respective communities exist in a symbiotic relationship. This complicated relationship requires a balancing of interests in order to ensure the social and economic well-being of all involved. Promoting the interests of AEP over all others will not only adversely affect the health of Ohioans, but ultimately will damage the financial and physical health of AEP and its employees. This proceeding represents a struggle that all of the parties must face together. This fact cannot get lost amidst thousands of pages of documents.

For all of the reasons set forth above, OHA respectfully requests that the Commission reject the application of AEP and craft a more reasonable and justified resolution to the setting of new electric rates.

Respectfully submitted on behalf of
OHIO HOSPITAL ASSOCIATION




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CERTIFICATE OF SERVICE

I hereby certify that the REPLY BRIEF OF THE OHIO HOSPITAL ASSOCIATION
was served by electronic mail on the parties of record listed below this 14th day of January 2009.


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