

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Commission finds:

- (1) On July 31, 2008, Columbus Southern Power Company and Ohio Power Company (jointly, the Companies) filed an application for a standard service offer (SSO), in the form of an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (2) On March 18, 2009, the Commission issued an opinion and order that approved the Companies' proposed three-year ESP (January 1, 2009, through December 31, 2009) with certain modifications, and directed each company to file revised tariffs consistent with the opinion and order and subject to final review and approval by the Commission.
- (3) On March 23, 2009, each company filed in final form four complete copies of its revised tariffs.
- (4) On March 25, 2009, the Office of the Ohio Consumers' Counsel (OCC) and the Appalachian People's Action Coalition (APAC) (jointly, Movants) filed a motion for stay or, alternatively, a motion to make rates subject to refund. The Industrial Energy Users-Ohio (IEU) filed a memorandum in support of the motion on the same day. Movants characterized the Commission's decision as retroactive ratemaking and argued that the stay is necessary to prevent irreparable harm to the Companies' residential customers during the pendency of any rehearing

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician Ann Date Processed 3/30/09

and/or appeal of the Commission's order. Alternatively, Movants argued that the Companies' retroactive collection of rates should be subject to refund.

- (5) Specifically, Movants argued that the four-factor test governing a stay is applicable to the facts of this case, and the test is met by the Movants. Movants claim that there is a strong likelihood that they will prevail on the merits, retroactive application of the new rates would cause irreparable harm to the Companies' customers, a stay would not cause substantial harm to the Companies, and a stay would further the public interest. Alternatively, Movants requested that the retroactive rate collections be subject to refund in order to protect customers in the event that the Commission's decision is modified by the Commission on rehearing or subsequently overturned by the Supreme Court of Ohio. Movants noted that retroactive ratemaking is not permitted by *Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 254, and IEU added that the Commission's March 18, 2009, order violates the longstanding principle established in *Keco*.
- (6) The Companies filed a memorandum contra the Movants' motion on March 27, 2009. The Companies oppose the motion for a stay as well as Movants' alternative. While recognizing the importance of due process and the extraordinary demands placed upon the Commission and all parties during the Section 4928.141, Revised Code, filings, the Companies noted that the 150-day statutory period for approving an ESP as the SSO pursuant to Section 4928.143(C)(1), Revised Code, was not met. While not assessing blame, the Companies expressed their disappointment with parties' positions articulated on this issue and stated that the Companies' right to receive a ruling on their ESP application within the statutory timeframe cannot be sacrificed. The Companies also argued that the Commission's resolution of this issue was lawful and reasonable under the circumstances. The Companies further contend that Movants have not satisfied their burden of demonstrating that a stay is justified.
- (7) Specifically, the Companies argued that the Commission's order approved a three-year ESP, which allowed for a prospective rate mechanism to implement the term of the ESP. The Companies also explained that under their proposed tariffs, customers are

not being re-billed at a higher rate for their first quarter usage. The Companies added that the allowance for prospective rates to effectively enable the collection of twelve months of revenue increase over a nine-month period is a modification to their proposed ESP, which still must meet the applicable statutory standard, which is that the modified ESP must be more favorable in the aggregate than the expected results of a market rate option established pursuant to Section 4928.142, Revised Code. The Companies added that IEU misapplies *Keco* and that, contrary to the Movants' claim, they will be substantially harmed by a stay. Lastly, the Companies contend that Movants' reliance on the Commission's November 17, 1982, decision in *Zimmer* (Case No. 81-1058-EL-AIR) is misplaced, and that granting the refund alternative proposed by Movants would unreasonably place any component of any future order approving a rate increase under a refund obligation.

- (8) On March 30, 2009, OCC filed its reply to the Companies' memorandum contra.
- (9) The Commission is not persuaded by the Movants or IEU that a stay is warranted under the circumstances of this proceeding, and cannot find that the Movants or IEU have demonstrated that the four-factor test governing a stay has been met. Additionally, the Commission does not agree with Movants' characterization of our action as allowing the Companies to retroactively collect rates. The new rates established pursuant to the ESP were not to go into effect until final review and approval by the Commission of the Companies' compliance tariffs. Therefore, it was anticipated that the new rates would not become effective until the first billing cycle of April (the Companies' existing tariffs approved by the Commission are scheduled to expire no later than the last billing cycle of March 2009).
- (10) Furthermore, the Commission finds no merit in IEU's argument regarding the Commission's December 19, 2008, and February 25, 2009, orders issued in Case No. 08-1302-EL-ATA, approving rates for the interim period. Our order issued on December 19, 2008, specifically directed that the rates in effect on July 31, 2008, would continue until an SSO is approved in accordance with Section 4928.142 or 4928.143, Revised Code. Consistent with our December 19, 2008, order, the Companies

filed tariffs to implement those rates. Subsequently, on March 18, 2009, the Commission approved the Companies' ESP, with modifications, pursuant to Sections 4928.141 and 4928.143, Revised Code, which required that a SSO be established pursuant to Section 4928.142 or 4928.143, Revised Code, by January 1, 2009.

- (11) The Companies' proposed tariff filing on March 23, 2009, implementing our March 18, 2009, order approving the ESP, with modifications, was reasonable and consistent with that order. Accordingly, the new rates should be implemented with the first billing cycle of April.
- (12) The Commission finds that the revised tariffs are reasonable and shall be approved, effective for bills rendered beginning the first billing cycle of April.

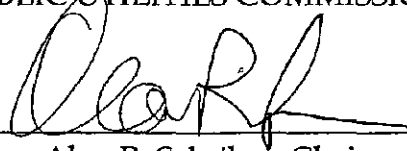
It is, therefore,

ORDERED, That the motion filed by OCC and APAC on March 25, 2009, is denied. It is, further,

ORDERED, That the revised tariffs filed by the Companies on March 23, 2009, are approved and effective for bills rendered beginning the first billing cycle of April. It is, further,

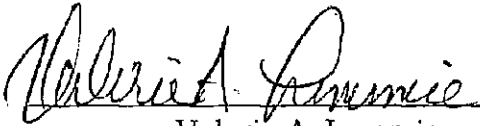
ORDERED, That a copy of this entry be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

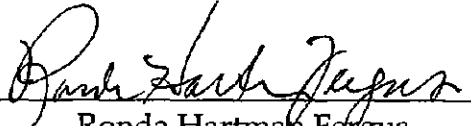


Alan R. Schriber, Chairman


Paul A. Centolella



Valerie A. Lemmie



Ronda Hartman Fergus



Cheryl L. Roberto

KWB:ct

Entered in the Journal

MAR 30 2009



Renee J. Jenkins
Secretary