

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

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.)

**REPLY TO
AEP OHIO'S MEMORANDUM CONTRA MOTION FOR STAY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio" or "Companies") filed a Memorandum Contra against the motion for stay¹ that OCC and the Appalachian People's Action Coalition ("APAC"), with the support of the Industrial Energy Users ("IEU"),² filed to protect Ohio consumers from millions of dollars in retroactive rates. AEP Ohio's Memorandum Contra is long on rhetoric but short on law, which will be explained in this Reply.

¹ Motion for Stay (Mar.25, 2009).

² IEU Memorandum in Support (Mar. 25, 2009).

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On March 18, 2009, the Public Utilities Commission of Ohio (“PUCO”) issued an Opinion and Order (“Order”) that approved electric security plans (“ESPs”) for AEP Ohio. The Order, among other things, approved large rate increases for the Companies and ordered the rate increase be effective as of January 1, 2009, allowing the Companies to collect the increases approved in March from customers retroactively to January 1, 2009.³ The increases were structured to become effective upon the Companies’ filing of tariffs, which would be subject to PUCO review.⁴ The Companies filed the tariffs on March 23, 2009, and the PUCO apparently will consider the tariffs at a meeting specially called for this afternoon.

In requesting to stay the effective date of the retroactive portion of the rate increases, OCC and APAC argued that a stay is necessary because the Order is unlawful and prohibited by Ohio law and Ohio Supreme Court precedent.

In its Memorandum Contra, AEP Ohio argued that (1) OCC and APAC had previously endorsed reconciling the Companies’ ESP rates with the short-term continuation of the Companies’ previous rates,⁵ (2) the Motion did not meet the standard for a stay,⁶ and (3) if a stay is not granted, the new rates should not be subject to refund.⁷

³*In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan ; An Amendment to its Corporate Separation Plan; And the Sale and Transfer of Certain Generation Assets, Case No. 09-917-EL-SSO et al.* Columbus Souther Power Compan y’s and Ohio Power Company’s Memorandum Contra Office of Consumers’ Counesl’s and Appalachian People’s Action Coalitions’s Motion for Stay or to Make a Protion of the Rates sSubject to Refund (March 27, 2009).

⁴*In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan ; An Amendment to its Corporate Separation Plan; And the Sale and Transfer of Certain Generation Assets, Case No. 09-917-EL-SSO et al., Opinion and Order* at 64 (Mar. 18, 2009).

⁵ Memo Contra at 3.

⁶ Id. at 4-12.

⁷ Id. at 12-13.

As discussed below, the Companies' arguments against the Motion are not persuasive.

II. ARGUMENT

A. **OCC's Earlier Suggestion That Approved ESP Rates Could Be Reconciled Against Rates in Effect on January 1, 2009 Was Conditioned on the PUCO Granting a 60-Day Extension of the Procedural Schedule, A Condition AEP Opposed and the PUCO Declined to Order. But, Regardless of What Meaning AEP Ohio Infers from OCC and APAC's Earlier Suggestion, the PUCO's Ruling is Unlawful.**

Contrary to AEP Ohio's assertion, OCC's so-called "endorsement" of the reconciling ESP rates and continuing the Companies' rate stabilization plan ("RSP") rates was for a limited purpose. OCC has responded to AEP's bald and meritricious assertions time and time again--at the evidentiary hearing, through the testimony of Witness Hixon, and in the filing of its short term implementation brief. But OCC will once again explain its position.

On August 28, 2009 OCC, Ohio Environmental Council, Ohio Partners for Affordable Energy, and the Sierra Club filed a Joint Motion for Continuance of Hearing and Extension of Time, requesting that the Commission grant an extension of the procedural schedule for 60 days, to allow more time for case preparation.⁸ Such an extension would have required the hearing to begin after January 1, 2009, the statutorily-required time for the Commission to render a decision on the Companies' application. In light of the fact that OCC was seeking an extension of time that would allow adequate case preparation but that would make it impossible for the Commission to meet the

⁸ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan ; An Amendment to its Corporate Separation Plan; And the Sale and Transfer of Certain Generation Assets, Case No. 09-917-EL-SSO et al.*, Joint Motion for Continuance of the Hearing and Extensions of Time (Aug. 28, 2008).

January 1st deadline, OCC stated that it would not object to AEP's true up proposal, reconciling the ESP rates established with the existing rates approved by the PUCO.⁹ On September 2, 2008, AEP filed a Memorandum Contra OCC's Motion for continuance.

The Commission, however, did not grant a 60-day extension of the procedural schedule, but instead granted a much-shorter 14-day extension.¹⁰ Thus, there was no impossibility created by OCC under which the Commission could not meet the January 1st deadline. And there certainly was no 60-day extension that had been the condition for OCC's proposal. Any point that existed for AEP Ohio to make about OCC's suggestion for a 60-day extension ceased to exist under the 14-day extension. Since the 60-day extension was not granted, the conditions under which OCC would not object to a reconciliation of the rates do not exist. Therefore, the Companies' argument is erroneous.

In any event, Ohio law, as explained in the motion for a stay, does not allow for AEP Ohio's retroactive collection from consumers. Similar to the old maxim about how to argue when the law and facts are unfavorable, AEP Ohio chooses to approach the unfavorable law and facts applicable to its position by the rhetorical device of attacking OCC and APAC and their earlier, conditional suggestion. The law and facts are clear that the rates cannot be collected retroactively. The PUCO should grant the stay or make the rates subject to refund.

⁹ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan ; An Amendment to its Corporate Separation Plan; And the Sale and Transfer of Certain Generation Assets, Case No. 09-917-EL-SSO et al.*, Joint Reply to Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Joint Motion for Continuance of Hearing and Extension of Time by the Office of the Ohio Consumers' Counsel and the Ohio Environmental Council at 4 (Sept. 5, 2008).

¹⁰ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan ; An Amendment to its Corporate Separation Plan; And the Sale and Transfer of Certain Generation Assets, Case No. 09-917-EL-SSO et al.*, Entry (Sept. 5, 2008).

While the Companies seem to claim that once a position is taken, it cannot be changed, this is really a silly argument at best. Taking the argument to its extremes would mean that any change in position on any issue for any reason should not be allowed. The Commission should have the good sense to summarily dismiss this line of argument—and recognize that the law does not allow for AEP Ohio's position regardless of whatever AEP Ohio claims OCC and APAC previously meant by its statement on the subject.

B. The Companies' Arguments Against a Stay Are Illusory.

The primary basis for the stay request is that consumers will be harmed by allowing the rates to go into effect retroactively before the rehearing process has been allowed to run its course. The Companies argue that this is a mischaracterization of the Order.¹¹ They assert:

The order and AEP Ohio's tariffs implementing the order do not provide for new rates during the first quarter of 2009 and individual customers are not being re-billed for January, February and March at the higher rate. Rather, the order and AEP Ohio's implementing tariff's provide for incrementally higher rates during the nine remaining months of 2009, which rates are designed to collect, on a total company basis for CSP and OP, twelve months of revenue increase within nine months. There is no retroactive application of the new rates.¹²

The Companies' argument is illusory. No matter how it is characterized, AEP Ohio's customers are being charged for the difference between the ESP rates and the RSP rates, post facto. This is retroactive ratemaking and the words of the Commission's order clearly convey the retroactivity—"...we are authorizing approval of AEP's ESP, as

¹¹ Memo Contra at 4.

¹² Id. at 4-5.

modified herein, effective January 1, 2009.”¹³ And, contrary to the Companies’ view, AEP Ohio’s customers will be irreparably harmed if they must pay the higher rates and the rates are ultimately found to be unlawful. The stay requested by OCC and APAC, and supported by IEU, is needed to prevent this harm to consumers.

In addition, the harm alleged by AEP Ohio, i.e., that its access to needed funding requirements would be limited, is speculative.¹⁴ It is highly unlikely that the difference between the ESP rates and the RSP rates for three months will have a significant adverse effect on a company the size of AEP Ohio. Making a portion of the revenue subject to refund would likewise have little effect on the Companies’ “financing capabilities.”¹⁵ This argument belies the fact that AEP has just been awarded an increase, by its own estimates, of \$408 million for OP and \$341 million for CSP which it can begin collecting immediately. The Companies’ arguments against the stay are baseless. The Commission should grant the Motion.

III. CONCLUSION

AEP Ohio has presented no compelling arguments against the Motion. In order to protect consumers, the Commission should grant the Motion and stay the effectiveness of the ESP rates approved in the Order, or in the alternative, make the rates subject to refund.

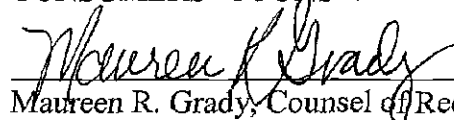
¹³ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan ; An Amendment to its Corporate Separation Plan; Opinion and Order* at 64 (Mar. 18, 2009).

¹⁴ *Id.* at 11.

¹⁵ *Id.* at n. 9.

Respectfully submitted,


JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL


Maureen R. Grady, Counsel of Record
Terry L. Etter
Jacqueline Lake Roberts
Michael E. Idzkowski
Richard C. Reese
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
grady@occ.state.oh.us
etter@occ.state.oh.us
roberts@occ.state.oh.us
idzkowski@occ.state.oh.us
reese@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to AEP Ohio's Memorandum
Contra was served electronically to the persons listed below, on this 30th day of March
2009.


Maureen R. Grady
Assistant Consumers' Counsel

SERVICE LIST

sbaron@jkenn.com
lkollen@jkenn.com
charlieking@snavely-king.com
mkurtz@bkllawfirm.com
dboehm@bkllawfirm.com
stnourse@aep.com
dconway@porterwright.com
jbentine@cwslaw.com
myurick@cwslaw.com
mwhite@cwslaw.com
khiggins@energystrat.com
barthroyer@aol.com
gary.a.jeffries@dom.com
nmoser@theOEC.org
trent@theOEC.org
henryeckhart@aol.com
nedford@fuse.net
rstanfield@nrdc.org
dsullivan@nrdc.org
ed.hess@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com
drinebolt@aol.com
cmooney2@columbus.rr.com
msmalz@oslsa.org
jmaskovyak@oslsa.org

ricks@ohanet.org
tobrien@bricker.com
todonnell@bricker.com
cvince@sonnenschein.com
preed@sonnenschein.com
ehand@sonnenschein.com
tommy.temple@ormet.com
steven.huhman@morganstanley.com
dmancino@mwe.com
glawrence@mwe.com
gwung@mwe.com
stephen.chriss@wal-mart.com
lgearhardt@ofbf.org
cmiller@szd.com
gdunn@szd.com
aporter@szd.com
erii@sonnenschein.com
agamarra@wrassoc.com
kschmidt@ohiomfg.com
sbloomfield@bricker.com
cynthia.a.fonner@constellation.com
david.fein@constellation.com
mhpetricoff@vssp.com
smhoward@vssp.com
bsingh@integrysenergy.com
cgoodman@energymarketers.com
lbell33@aol.com
miresnik@aep.com
stnourse@aep.com
Greta.See@puc.state.oh.us
Kim.Bojko@puc.state.oh.us