

**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 )  
Approval of its Electric Security Plan; an )  
Amendment to its Corporate Separation )  
Plan; and the Sale or Transfer of )  
Certain Generating 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. 08-918-EL-SSO

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**INDUSTRIAL ENERGY USERS-OHIO'S REPLY TO  
AEP-OHIO'S MEMORANDUM CONTRA**

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**April 24, 2009**

**Attorneys for Industrial Energy Users-Ohio**

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**INDUSTRIAL ENERGY USERS-OHIO'S REPLY TO  
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On March 18, 2009, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Opinion and Order ("Order") addressing the proposed electric security plan ("ESP") of Columbus Southern Power Company and Ohio Power Company (individually "CSP" and "OP", respectively, and collectively "Companies" or "AEP-Ohio"). As instructed by the Order, AEP-Ohio filed revised tariffs on March 23, 2009. A transmittal letter accompanied the revised tariff filing on March 23, 2009. The transmittal letter stated that AEP-Ohio was not waiving its right to seek rehearing or to withdraw the ESP application. AEP-Ohio's transmittal letter notified the Commission that it would make its decision after action taken by the Commission in response to any rehearing requests.

Over the objections of intervenors, the Commission approved the revised tariffs on Monday, March 30, 2009, and AEP-Ohio promptly began billing customers, on a

"bills rendered" basis, rates and charges for electric service that produce total bill increases significantly in excess of the amounts specified in the Commission's Order.

On April 17, 2009, the last day for doing so, AEP-Ohio filed an Application for Rehearing asserting that the Commission's Order is unreasonable and unlawful in many (thirteen) respects. AEP-Ohio's rehearing request asks the Commission to provide relief in response to its Application for Rehearing so that AEP-Ohio can "... make an informed decision on whether to accept or withdraw the Commission-modified plan".<sup>1</sup>

On April 20, 2009, three days (counting a weekend) after AEP-Ohio filed its Application for Rehearing claiming that the PUCO's Order was unreasonable and unlawful, IEU-Ohio filed its Motion For Immediate Relief From Electric Rate Increases ("motion") seeking immediate relief for the effects of the actions taken by AEP-Ohio to raise rates pursuant to an Order which modified AEP-Ohio's ESP proposal in ways that have not been accepted by AEP-Ohio. On April 23, 2009, AEP-Ohio filed a Memorandum Contra IEU-Ohio's Motion For Immediate Relief From Electric Rate Increases ("memorandum") opposing the relief requested in IEU-Ohio's April 20, 2009 motion. IEU-Ohio's reply to AEP-Ohio's memorandum follows.

AEP-Ohio's April 23, 2009 memorandum attempts to incorrectly reframe the issue that was raised by IEU-Ohio's April 20, 2009 motion by claiming that IEU-Ohio is contesting AEP-Ohio's right to seek rehearing. But, IEU-Ohio has no quarrel with AEP-Ohio exercising its right to seek rehearing (even if, as it has been, the right is exercised by erroneous claims). IEU-Ohio's motion asks the Commission to stop AEP-Ohio from billing and collecting rate increase that can only be lawful if AEP-Ohio is acting under a Commission order that is lawful. It is IEU-Ohio's position that Section 4928.143,

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<sup>1</sup> AEP-Ohio Application for Rehearing at 3.

Revised Code, does not, under any circumstances, make lawful a Commission order modifying a proposed ESP unless and until the modifications are accepted by the utility even if the acceptance comes with a caveat that the utility will be asking the Commission to grant rehearing. In this case, AEP-Ohio has not accepted the March 18, 2009 Order and, through its rehearing request, it has made it clear that it believes the Order is unreasonable and unlawful.

Had AEP-Ohio not sought rehearing, AEP-Ohio would have implicitly accepted the Order. Then, perhaps, it might have been possible to weave together a legal theory that allows the March 18, 2009 Order to provide the legal support for the stunning rate increases that are currently being billed and collected by AEP-Ohio. But AEP-Ohio has not done anything relative to the March 18, 2009 Order other than to contest its lawfulness for purposes of rehearing while implementing rate increases that can only be lawful if the Order is lawful. The support for IEU-Ohio's legal position is not in "nowhere land" as AEP-Ohio claims; it is in Sections 4928.143 and 4928.141, Revised Code, as IEU-Ohio explained in its April 20, 2009 pleading.

This is not a case where, as in traditional rate proceedings, the Commission's directives regarding rates and charges must be followed by the utility until the directives are modified by the Commission through the rehearing process or through the appellate jurisdiction of the Ohio Supreme Court. The General Assembly has equipped electric distribution companies with an absolute right to veto any order issued by the Commission that modifies a proposed ESP. Upon the exercise of this veto right, the Commission's order is null and void. And, by permitting AEP-Ohio to take the benefits of the stunningly large rate increases that are presently being billed and collected in the

name of the Commission's March 18, 2009 Order, the Commission is making the real power of this veto right even greater. **If the Commission allows AEP-Ohio to get away with implementing rate increases tied to an order that modifies an ESP in ways that AEP-Ohio claims are unreasonable and unlawful, it is the Commission, not the General Assembly, that has painted the Commission into a legal corner and devalued the legal authority conferred on the Commission by the General Assembly.**

AEP-Ohio's April 23, 2009 memorandum (at page 2) also wrongly indicates that IEU-Ohio's April 20, 2009 motion stands for the proposition that a utility must decide whether to exercise its veto over an order modifying an ESP until it knows how the Commission will rule on rehearing. Again, IEU-Ohio's motion does not suggest that AEP-Ohio cannot withhold its decision on the use of its veto until it sees what happens on rehearing. IEU-Ohio's position is that AEP-Ohio cannot withhold this decision, contest the lawfulness of the Order AND, at the same time, treat the Order modifying its proposed ESP as lawful for purposes of billing and collecting rate increases that can only be lawful if the Order is lawful. IEU-Ohio's position is that if the Order were accepted by AEP-Ohio and then the Commission changed the Order through the rehearing process in ways that AEP-Ohio did not agree with, then AEP-Ohio could exercise its veto power.

As in most struggles that have a litigation life, there are also things going on outside the confines of the litigation context that may help to explain the zeal or advocacy of the parties. Even if the Commission ignores the plight of customers

struggling to survive the present economic circumstances, this is certainly true in this instance.

For customers who were told by the Commission that they would be seeing seven or eight percent increases in their total electric bill in 2009 and who have actually seen twelve to sixteen percent, there is a clear sense that something is very wrong with the picture. Customers also know that AEP-Ohio's management team is telling the investment community that their success before regulators has been *phenomenal* while speaking of how emotional they become when they think about the tremendous success that has been achieved on the regulatory front. IEU-Ohio urges the Commission to take a few minutes and listen to and review the very public and transparent presentation American Electric Power ("AEP") made on April 24, 2009 in conjunction with AEP's first quarter earnings release.<sup>2</sup> There the Commission will find confirmation for the things IEU-Ohio has said about the effects of the Order. For example, at page 30 of the slide presentation given to analysts, AEP confirms that the Order will, over the thirty-three month ESP period, cause rates to increase by close to \$1.5 billion and that it is going to be able to cram the "future compliance cost of carbon regulation" into retail rates in Ohio because it has been "explicitly included in the FAC". In the real world, AEP-Ohio's management is claiming *phenomenal* regulatory success while, for regulatory purposes, it is issuing statements about its unhappiness with the Order and reserving its

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<sup>2</sup> The presentation (Analyst & Investor Meeting/1st Quarter 2009 Earnings Results Webcast) is available via the Internet and AEP's website at <http://www.aep.com/investors/webcasts/>.

veto right for use as a hypocritical threat to make its regulatory success even more *phenomenal*.<sup>3</sup>

# Overview of Ohio Electric Security Plan

## AEP OHIO - ELECTRIC SECURITY PLAN FINANCIAL HIGHLIGHTS OF ESP

| Description   | 2009                |            | 2010                |            | 2011                |            | Cumulative          |            |
|---|---------------------|------------|---------------------|------------|---------------------|------------|---------------------|------------|
|   | ESP Appl.           | PUCO Order | ESP Appl.           | PUCO Order | ESP Appl.           | PUCO Order | ESP Appl.           | PUCO Order |
|   | Incremental Revenue |            | Incremental Revenue |            | Incremental Revenue |            | Incremental Revenue |            |
| Total Fuel Adjustment Clause (FAC)<br>(Incl. OVEC of \$68.6M) | 214.5M              | 64.3M      | 455.1M              | 228.6M     | 510.8M              | 255.7M     | 2064.5M             | 918.0M     |
| Non-FAC   |                     |            |                     |            |                     |            |                     |            |
| Environmental Capital (Carrying Costs)                        | 110.0M              | 110.0M     | 0.0M                | 0.0M       | 0.0M                | 0.0M       | 330.0M              | 330.0M     |
| Generation Assets   | 0.0M                | 51.0M      | 0.0M                | 0.0M       | 0.0M                | 0.0M       | 0.0M                | 153.0M     |
| Non-FAC Generation (3% & 7%)                                  | 56.0M               | 0.0M       | 59.3M               | 0.0M       | 62.8M               | 0.0M       | 349.3M              | 0.0M       |
| POLR  | 114.8M              | 100.1M     | 0.0M                | 0.0M       | 0.0M                | 0.0M       | 344.3M              | 300.3M     |
| Distribution  | 45.0M               | 34.9M      | 48.1M               | 6.2M       | 51.4M               | 3.6M       | 282.5M              | 129.7M     |
| Energy Efficiency/Demand Response                             | 30.4M               | 0.0M       | 32.6M               | 0.0M       | 21.4M               | 0.0M       | 177.8M              | 0.0M       |
| Other   | -107.7M             | -112.8M    | 0.0M                | 0.0M       | 38.0M               | 0.0M       | -205.2M             | -241.4M    |
| Total Non-FAC   | 245.5M              | 192.2M     | 140.0M              | 6.2M       | 173.6M              | 3.6M       | 1198.7M             | 562.6M     |
| Total Cash Increase   | 462.8M              | 246.5M     | 595.1M              | 234.8M     | 684.4M              | 259.4M     | 3263.2M             | 1479.6M    |
| Partnership with Ohio Fund                                    |                     |            |                     |            |                     |            |                     |            |
|   | Other Components    |            | Other Components    |            | Other Components    |            | Other Components    |            |
|   | -75.0M              | -5.0M      | 0.0M                | 0.0M       | 0.0M                | 0.0M       | -75.0M              | -15.0M     |

### ■ Revenue increases:

|       | 2009 | 2010 | 2011 |
|-------|------|------|------|
| OPCo  | 8%   | 7%   | 8%   |
| CSPCo | 7%   | 6%   | 6%   |

### ■ Fuel recovery mechanism

- Any under-recoveries earn WACC similar to plant investment
- Deferred fuel balances at end of ESP are amortized and recovered 2012-2018
- Recovery of future costs of carbon regulation explicitly included in FAC

### ■ Opportunity for distribution rate cases

**AMERICAN ELECTRIC POWER**

p.30

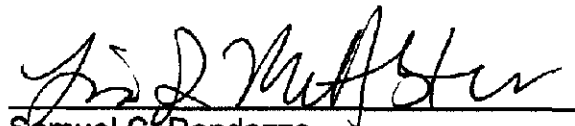
For the reasons explained previously and herein, IEU-Ohio urges the Commission to direct AEP-Ohio to: (1) cease and desist from billing and collecting any rates and charges that may currently be on file with the Commission as a result of the Order; and (2) only bill and collect such rates and charges as may apply by the terms of the rate plan that was in effect on March 18, 2009.<sup>4</sup> Additionally, IEU-Ohio urges the Commission to direct AEP-Ohio to refund, with a reasonable interest, any amounts collected from consumers in excess of the amount that AEP-Ohio was authorized to bill

<sup>3</sup> See Jeff Bell, *High AEP Bills Leave Some in Dark About Higher Rates*, Columbus Business First, April 24, 2009, at 1, 43 (attached hereto as Attachment A).

<sup>4</sup> Section 4928.141(A), Revised Code, makes it clear that previously authorized transition costs are to be excluded.

and collect pursuant to the rates and charges that were in effect at the time the Order was issued.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "S. C. Randazzo", is written over a horizontal line.

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## High AEP bills leave some in dark about higher rates

**CUSTOMERS ARE COMPLAINING** to the state that their charges have gone up well beyond the caps set by regulators.

BY JEFF BELL | BUSINESS FIRST

Critics of American Electric Power Company Inc.'s new rate increase say the numbers aren't adding up on bills of customers served by the Columbus-based power company.

Some larger businesses will see increases of 15 percent or more in their electric bills this year, based on calculations of rates AEP filed with the Public Utilities Commis-

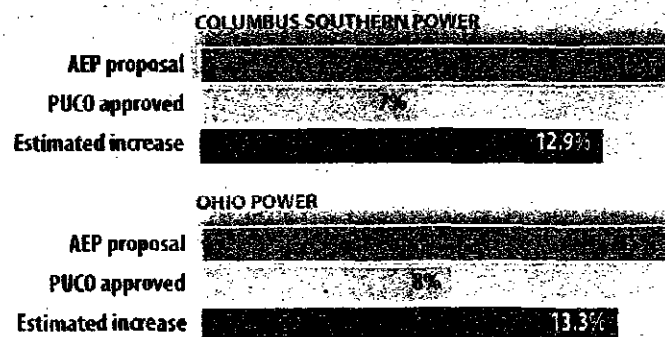
sion of Ohio, said Sam Randazzo, an attorney for Industrial Energy Users-Ohio, a coalition of about 50 industrial and commercial businesses in the state.

Randazzo said it is his understanding that other companies and residential customers also are experiencing double-digit increases, which started showing up on April bills.

Such increases exceed rate  
SEE AEP, PAGE 43

### A REAL SHOCKER

Residential customers of Columbus Southern Power and Ohio Power are seeing double-digit percentage increases in their monthly bills, according to the Ohio Consumers' Counsel. Regulators capped the increases in the single digits:



\* Effective with April billings, based on average residential usage of 1,000 kilowatt hours a month.

FROM PAGE 1

# AEP: One company says unaffordable rates might drive it from Columbus

FROM THE FRONT

caps ordered by the PUCO when it approved AEP's rate increase request March 18, Randazzo said.

The commission capped the increases at 7 percent and 8 percent this year for AEP subsidiaries Columbus Southern Power and Ohio Power, respectively. AEP had requested increases of 15 percent for 2009, 2010 and 2011.

"If the PUCO issues an order saying this is the way it's going to be, then the utility has to comply," Randazzo said. "(AEP) is going to have to fix it. There is something wrong."

## 'OUT IN THE OPEN'

AEP is in compliance with the PUCO order, said Solwyn Dias, a vice president at AEP Ohio. He said first-year transition charges granted by the commission includes the reason some bills exceed the caps. That includes a provision that AEP can collect 12 months of increases over the last nine months of this year after the PUCO failed to meet a Dec. 31 deadline to rule in the rate case. AEP filed its request in July.

Other factors affecting the size of a customer's bill include its rate schedule, electricity use and power load levels, Dias said. In addition, he said, some industrial customers' bills changed because their special rate contracts approved by the PUCO expired at the end of 2008.

"Everything has been out in the open,"



S. Randazzo: 'Something wrong'

Dias said. "The (PUCO) is aware of all the issues."

Rate increases for the next two years, Dias said, will be at the caps set in the PUCO order - 6 percent in 2010 and 2011 for Columbus Southern Power, which serves much of Central Ohio, and 7 percent in 2010 and 8 percent in 2011 for Ohio Power.

But questions remain about those rates, as evidenced about letter Abbott Nutrition recently filed with the PUCO. Abbott said that after speaking with AEP, it determined its electric rate increase will be nearly 14 percent this year. It also said an AEP representative told the company AEP cannot say what the rate increase will be in 2010 and beyond.

Abbott, which makes nutritional products such as Similac and Pediasure, said its Columbus plant is already Abbott Laboratories' most expensive in the country. It employs more than 2,000 workers.

"Due to this unexpected financial challenge in utilities," Abbott's letter said, "we may soon find ourselves unable to continue to exist (in Columbus) and provide the jobs that are so critical to the well-being of the people who live in our community."

Abbott is among other companies and trade groups asking the PUCO to review its AEP decision through a rehearing process that could begin in mid-May.

Others filing rehearing applications include Industrial Energy Users-Ohio, Office of the Ohio Consumers' Counsel, Ohio Manufacturers' Association and Ohio

Hospital Association.

The PUCO has just started reviewing those applications, so it's difficult to say why increases in AEP customers' April bills may be higher than the rate caps in the commission's order, said PUCO spokeswoman Shana Eiselstein. "I don't want to say anything that would compromise the rehearing process," she said.

The commission has 30 days from the April 17 filing deadline to rule on rehearing applications, Eiselstein said. The PUCO can grant the rehearings and decide to modify its order, or it can deny the applications. A denial would open the door for groups fighting the AEP rate ruling to take their case to the Ohio Supreme Court.

## UNHAPPY ALL AROUND

Besides seeking a rehearing in the AEP case, the Ohio Consumers' Counsel has been joined by Cincinnati-based Kroger Co. and the state hospital and manufacturers associations in asking the Supreme Court to block the retroactive portion of AEP's rate increase. Consumers' Counsel Janine Migden-Ostrander has contended that Ohio law prohibits retroactive rate-making by the commission.

In addition, her office's application for a rehearing in the AEP case challenges the provision that will allow the power company to defer electric generation costs above the capped increases of the next three years. The consumers' counsel estimates the deferred costs, plus interest, could cost residential and business cus-

tomers more than \$900 million through 2018.

Other complaints include the amount the PUCO is allowing AEP to collect for its so-called smart grid energy efficiency and electric demand-side management program, tree trimming and vegetation management along its power lines, and a provider-of-last-resort charge based on the utility's estimated financial risk when customers shop for alternate electric suppliers and then come back to AEP for service.

But the size of the rate hikes granted to AEP is the most galling to Industrial Energy Users' Randazzo. He called the rates "stunningly excessive" and said the 15 percent or more increases being seen are at a level that commission members had rejected on the grounds they would impose a severe hardship on AEP customers. "The PUCO did nothing to stop the 2009 excessive increase from going into effect," Randazzo said.

AEP Ohio's Dias said Columbus Southern and Ohio Power's electric rates are still among the lowest in this part of the country.

He also said AEP disagreed with parts of the PUCO order and has filed a rehearing application of its own. The company is challenging the order in 13 areas, calling the commission's ruling on those issues "unreasonable and unlawful."

"They're not the only folks unhappy," Dias said of AEP's critics in the rate case.

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APRIL 24, 2009

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY TO AEP-OHIO'S MEMORANDUM CONTRA was served upon the following parties of record this 24<sup>th</sup> day of April, 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.

  
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