

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus )  
Southern Power Company for Approval of its )  
Electric Security Plan; and 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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**MEMORANDUM CONTRA OF OHIO PARTNERS FOR AFFORDABLE  
ENERGY TO THE APPLICATION FOR REHEARING OF COLUMBUS  
SOUTHERN POWER COMPANY AND OHIO POWER COMPANY**

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**INTRODUCTION**

The Public Utilities Commission of Ohio ("Commission") has given Columbus Southern Power Company and Ohio Power Company ("Companies") \$1.479 billion in new revenue – cash – over 33 months – in a state that has been hammered economically throughout this decade; a state where customers have paid for the powerplants; the fuel to run them; the pollution controls; the operational costs; and a handsome profit to the Companies for many decades. In return, customers have received subpar service; significant rate increases unrelated to underlying costs; and, reduced employment by the Companies. Customers have paid for a pointless \$10 million dollar payment for Monongahela Power when the lowest priced utility in the state left the state. Now those same customers face 20+% rate increases, plus an undisclosed amount in additional increases that will be placed on a credit card at high interest. And, they will be making the down payment on smart grid and smart meter schemes that will ultimately cost ratepayers billions, while enabling utilities to charge the highest

possible rate every hour. A customer's only option is to turn off his power to escape the peak prices – that's real service.

The electric meter is much more than a cash register. It is a link for households and businesses to a critical element of their existence. The provider is a *de facto* monopoly, holding all the cards when it faces down customers. Where are the provisions protecting 'at risk' customers? Under this plan, all customers wind up being at risk. There is nothing just and reasonable about the Application as originally filed or the proposal as modified by the Commission. We need to go back to the rates in effect on July 31, 2008 and start over. The Companies' application for rehearing should be denied in its entirety.

## **ARGUMENT**

- I. **The Public Utilities Commission of Ohio has the authority to modify a proposed ESP prior to applying the 'more favorable' test required by R.C. 4928.143(C)(1).**

AEP argues that the Commission is prohibited from considering the evidence developed during a hearing on an Electric Security Plan (ESP) application filed under R.C. 4928.143. The AEP reading of the statute would in effect require the Commission to hold two hearings, the first to determine whether the ESP as filed is more favorable than a Market Rate Offer (MRO). AEP contends that unless the Commission finds that the unchanged ESP is 'more favorable', it cannot require any further analysis. This is a clear misreading of the statute.

While R.C. 4928.143 includes a statutory test for comparing an ESP to an MRO, this test does not invalidate the balance of the statute, which requires an applicant to meet a variety of standards applicable to various potential

components of the plan. The Commission cannot approve portions of a plan that do not meet statutory requirements.

R.C. 4928.143(B) lists a variety of statutory criteria which must be met in order to include particular components within an ESP. R.C. 4928.143(B)(2)(a), for example, requires that a utility can request recovery of 'prudently incurred' costs associated with fuel and various other related costs. Absent a showing that the application provides a mechanism to ensure costs are properly defined and prudently incurred, the Commission cannot approve recovery without imposing modifications which assure statutory compliance. Criteria also apply to requests for funding for construction work in progress or creating a nonbypassable surcharge to finance the construction of a new facility. R.C. 4928.143(B)(2)(b) and (c). Charges requested under R.C. 4928.143(B)(2)(d) must be shown to "stabilize or provide certainty regarding retail electric service." The same requirements are conditions precedent for many of the other provisions.

The utility has the burden of proof when supporting components of the plan. If it does not meet that burden, the provision cannot be included in the ESP. Columbus Southern Power and Ohio Power (collectively "AEP" or "the Companies") are free to propose a wide variety of provisos within the ESP. It is the responsibility of the PUCO to dispose of those and it has done so.

AEP simply misreads the statute. The General Assembly contemplated that the Commission might well have to modify an ESP application in order to meet the 'more favorable in the aggregate' legislative standard. SB 221 provides that in the event the Commission modifies the utility proposal, the utility has the

ability to withdraw it and revert to the rates in place on the effective date of the statute (and we assume provide a refund if it has been allowed to implement rate increases prior to the withdrawal.) Logic dictates that the Commission need not simply review the ESP proposal *in toto*. Otherwise, the General Assembly would not have permitted withdrawal based on modifications made by the Commission. While OPAE does not believe that the ESP as modified is actually more favorable in the aggregate than an MRO, the Commission certainly has the authority to make modifications in the initial filing.

**II. The Commission was correct to reserve certain issues for a distribution rate case.**

The Companies complain that a number of proposals that would swell the level of revenue it collects under the ESP have been postponed for consideration in a base rate case. AEP Application for Rehearing at 9 and 27. This stay is appropriate. The Companies cite to the language of R.C. 4928.143(B)(2)(h) that indicates that single issue ratemaking, decoupling, and a variety of other distribution related issues may be included in an ESP 'without limitation'. That is true. As the statute indicates, such provisions 'may' be included. R.C. 4928.143(B). That does not mean the Commission need approve them, particularly if inclusion would render the ESP less favorable than an MRO. Moreover, the Companies have not had a distribution rate case for many, many years. At this point, the distribution rates have no relationship to costs. This ESP application simply requests to increase the revenue stream to AEP, burdening customers with additional unjustified costs. Customers deserve to get

what they are paying for. Absent such a showing, these issues must be deferred to a distribution rate case. The Commission decision should be upheld on this issue.

**III. The Commission correctly limited funding for the gridSMART Program.**

AEP proposes to implement a comprehensive 'gridSMART' program including Distribution Automation, Advance Meters ("AMI"), and installation of Home Area Networks ("HAN"). OPAE supports the position taken by the Commission in significantly reducing the funding provided for the smart grid project; it should actually limit the funding to the components that are cost-effective under standard cost effectiveness tests. AEP should be required to seek federal funding to reduce the impact on economically battered ratepayers.

Moreover, this change requires AEP to refine its proposal. OPAE provided testimony that the investments should be cost-effective for customers. OPAE Exhibit 1 at 22-23. Staff concurred in this recommendation. Staff Exhibit 3 at 4-5 (Scheck). R.C. §4928.02(D). With the reduced funding, AEP should focus on distribution system automation, which is justified given the horrid reliability record of the Companies. Save the smart meters for federal funding: the meters are not cost-effective for customers so should be paid for, if at all, with federal funds. If those funds are not available, customers should not be forced to pay for them until they are found to be cost-effective.

**IV. The Commission modifications to the FAC are appropriate.**

AEP objects to the limitation of the FAC to the period of the ESP. AEP Application for Rehearing at 37. It was AEP that chose to propose a three year

ESP. As a result, other than deferrals, no provision should be authorized beyond the end of the term of the plan. Customers are being forced to accept unjust and unreasonable rate increases for the next three years. They should not be burdened in perpetuity with unreasonable fuel and related costs. Moreover, AEP fails to justify the need for an FAC beyond the three year period. There is no evidence that AEP has or will undertake a long term least cost approach to acquiring fuel and purchased power resources necessary to meet the needs of its customers. No one knows what will happen when this plan expires and no one knows what the FAC might be beyond three years. The modification made by the Commission in limiting the FAC to three years should be retained.

The other aspect of the FAC, as modified, that AEP objects to is the baseline established to determine the additional costs to be recovered. While the Commission-approved baseline is still too high, the proposal put forward by the Companies in the Application was unreasonable and remains so. Simply presuming that fuel costs alone went up 3% and 7% as a proxy because those are the numbers used in the Rate Stabilization Plan ("RSP") is not justified. As AEP notes in its Application for Rehearing, these automatic increases are to provide 'flexibility' to react to cost increases, planned and unplanned. AEP Application for Rehearing at 15. That is the same reason the automatic increases were included in the RSP. As a result, if the costs of fuel surged in 2008, the baseline should reflect those actual costs. AEP request for modification should be rejected.

## **CONCLUSION**

All AEP customers are placed 'at risk' by the ESP as approved by the Commission. The issues raised by AEP would only increase the economic burdens faced by customers. Rejection of this entire mess is in order. Rates should revert to those in place on July 31, 2008 as required by the statute and AEP and the Commission can try again to develop an ESP that provides just and reasonable rates as required by the General Assembly.

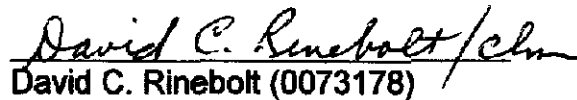
The non-FAC rate increases are simply not justified. AEP was awarded no generation transition costs in the case filed under SB 3 because the value of their generation fleet compared to market would more than cover the costs of maintaining the fleet. That has not changed. The FAC proposed is likewise unreasonable. It is not based on a least-cost procurement strategy. It cannot and should not extend beyond the ESP's three year term; AEP requested three years and should be limited to it. Deferrals are unwarranted and add additional expense over the long-term. The absurdity of charging customers a POLR charge by Companies that have never seen shopping speaks for itself. If customers pledge not to shop, there is no risk and there should be no charge. AEP's smart grid proposal, to the extent it is approved at all, should be limited to distribution system automation and other components proven cost-effective. Good luck in making that showing. And, given that AEP customers no longer know what they are paying for in distribution rates, any distribution-related provision should be held over for a traditional rate case. AEP may be authorized to file for single-issue ratemaking because the statute authorizes such filings, but



customers should not be forced to pay more absent the knowledge of what they are paying for currently.

SB 221 did not repeal or authorize ignoring R.C. Sec. 1.47 which requires Ohio law be interpreted to produce a just and reasonable result. The Companies' original Application failed to recognize this requirement, as does the Application for Rehearing. In addition, the Commission, in the final analysis, has not met the requirements of statute. AEP's ratepayers cannot afford a \$1.479 billion boondoggle. The Application as modified by the Commission should be rejected and in the interest of customers we should simply start over. The Companies' application for rehearing should also be denied in its entirety.

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**On Behalf of Ohio Partners for  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra was served by regular U.S. Mail, postage prepaid, and electronically upon the parties of record identified below on this 27th day of April, 2009.

  
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