

FILE

BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO

10
RECEIVED-DOCKETING DIV
2009 JUL 31 PM 3:45
PUCO

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.)

COLUMBUS SOUTHERN POWER COMPANY'S
APPLICATION FOR REHEARING

Pursuant to §4903.10, Ohio Rev. Code, and §4901-1-35 (A), Ohio Admin. Code, Columbus Southern Power Company (CSP) seeks rehearing of the Commission's July 23, 2009 Entry on Rehearing. The Commission's Entry on Rehearing reversing its March 18, 2009, Opinion and Order in this proceeding regarding CSP's proposal to sell or transfer its Waterford Energy Center (Waterford) and Darby Electric Generating Station (Darby) is unlawful and unreasonable. On rehearing, since the Commission revoked CSP's authority to recover its customers' jurisdictional share of the costs associated with maintaining and operating Waterford and Darby, the Commission should concurrently exercise its authority under §4928.17 (E), Ohio Rev. Code, to authorize CSP to sell or transfer these two facilities.

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 ASJ Date Processed 7/31/09

MEMORANDUM IN SUPPORT OF REHEARING

In its March 18, 2009, Opinion and Order, the Commission stated:

If the Commission is going to require that the electric utilities retain these generating assets, then the Commission should also allow the Companies to recover Ohio customers' jurisdictional share of any costs associated with maintaining and operating such facilities. (Opinion and Order, p. 52).

This ruling resulted from CSP's proposal to acquire authority to sell or transfer these mercantile generating facilities. As CSP's witness, Mr. Baker, explained, the Waterford plant was purchased in 2005 and Darby was purchased in 2007. (Co. Ex. 2 A, p. 42). "Neither of these units have ever been in CSP's rate base and customers' generation rates have not reflected CSP's investment in the plants or the expenses of operating and maintaining the plants." (*Id.*) With no rate recovery, these plants were purchased in anticipation of generation rates being market-based under SB 3. CSP "took the risk on these plants and therefore, ... its appropriate for us to have the authority to, if we choose, to transfer or sell the assets at our discretion." (Tr. XIV, p. 155). In rebuttal testimony, Mr. Baker testified that if CSP is prohibited from selling or transferring these units, any expense not recovered in the Fuel Adjustment Clause (FAC) should be recovered in the non-FAC rate. (Co. Ex. 2 E, p. 21).

In its March 18, 2009, Opinion and Order, the Commission denied CSP the authority it sought under §4928.17 (E), Ohio Rev. Code. However, based on its reasoning quoted above, it authorized cost recovery associated with Waterford and

Darby. The Company viewed the Commission's ruling as a fair balance regarding that issue and did not challenge the ruling on rehearing.

Now, however, the Commission's Entry on Rehearing has completely upset the balance it struck in its Opinion and Order. If the Commission were going to revoke the rate authorization it provided in the Opinion and Order it also should have reconsidered its ruling as it related to authority to sell or transfer the Waterford and Darby facilities and granted CSP the authority it sought under §4928.17 (E), Ohio Rev. Code, regarding Waterford and Darby. Having failed to do so, the Commission's orders are unreasonable and unlawful and should be modified on rehearing to authorize the sale or transfer of Waterford and Darby.

It is unreasonable to force CSP to keep these generating units and not be able to recover any costs associated with these units. The Commission already has recognized this. Therefore, with the cost recovery provision of the Opinion and Order being revoked on rehearing, the fair and reasonable course of action now is to authorize CSP to sell or transfer those units.

Authorization of a sale or transfer also is legally required if the Commission is not allowing cost recovery associated with these merchant plants. The unbundling process required by S.B. 3 resulted in a generation rate that reflected previously-determined cost recovery for CSP's generating facilities. The generation rates under the "rate plan" (the Standard Service Offer in effect on the effective date of S.B. 221) did not include recovery of costs associated with maintaining and operating Waterford or Darby or of a return on CSP's investment in those plants. With the Commission's reversal in its Entry on Rehearing of the Waterford and Darby cost recovery, CSP is unlawfully put in the

position of being required to retain these facilities but not being permitted to make any adjustment to the rate plan rate to recover costs of maintaining and operating those units or recover a return on the investment in those plants. On rehearing the Commission should rectify this unlawful situation by granting CSP the authority it sought in the proceeding to sell or transfer Waterford and Darby.

Respectfully submitted,



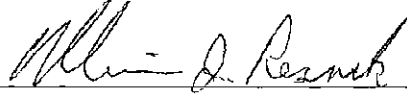
Marvin I. Resnik
Steven T. Nourse
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1606
Telephone: (614) 716-1608
Fax: (614) 716-2950
Email: miresnik@aep.com
stnourse@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 South High Street
Columbus, Ohio 42315
Fax: (614) 227-2100
dconway@porterwright.com

Counsel for Columbus Southern Power Company
and Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Application for Rehearing was served by electronic mail upon the individuals listed below this 31st day of July 2009.



Marvin I. Resnik

sbaron@jkenn.com
lkollen@jkenn.com
charlicking@snavely-king.com
mkurtz@bkllawfirm.com
dboehm@bkllawfirm.com
grady@occ.state.oh.us
etter@occ.state.oh.us
roberts@occ.state.oh.us
idzkowski@occ.state.oh.us
stnourse@acp.com
dconway@porterwright.com
jbentline@cwslaw.com
myurick@cwslaw.com
mwhite@cwslaw.com
khiggins@energystat.com
barthroyer@aol.com
gary.a.jeffries@dom.com
nmoser@theOEC.org
trent@theOEC.org
henryeckhart@aol.com
nedford@fuse.net
rstanfield@nrde.org
dsullivan@nrde.org
tammy.turkenton@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
sam@mwnemh.com
lmcalister@mwnemh.com
jclark@mwnemh.com
drinebolt@aol.com
cmooney2@columbus.rr.com

ricks@ohanet.org
tobrien@bricker.com
david.fein@constellation.com
cynthia.a.fonner@constellation.com
mhpetricoff@vssp.com
smhoward@vssp.com
cgoodman@energymarketers.com
bsingh@integrysenergy.com
lbell33@aol.com
kschmidt@ohiomfg.com
sdebroff@sasllp.com
apetersen@sasllp.com
sromeo@sasllp.com
bedwards@aldenlaw.net
sbloomfield@bricker.com
todonnell@bricker.com
cvince@sonnenschein.com
preed@sonnenschein.com
ehand@sonnenschein.com
erii@sonnenschein.com
tommy.temple@ormet.com
agamarra@wrassoc.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

BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO

22

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.)	

**COLUMBUS SOUTHERN POWER COMPANY'S
APPLICATION FOR REHEARING**

Pursuant to §4903.10, Ohio Rev. Code, and §4901-1-35 (A), Ohio Admin. Code, Columbus Southern Power Company (CSP) seeks rehearing of the Commission's July 23, 2009 Entry on Rehearing. The Commission's Entry on Rehearing reversing its March 18, 2009, Opinion and Order in this proceeding regarding CSP's proposal to sell or transfer its Waterford Energy Center (Waterford) and Darby Electric Generating Station (Darby) is unlawful and unreasonable. On rehearing, since the Commission revoked CSP's authority to recover its customers' jurisdictional share of the costs associated with maintaining and operating Waterford and Darby, the Commission should concurrently exercise its authority under §4928.17 (E), Ohio Rev. Code, to authorize CSP to sell or transfer these two facilities.

MEMORANDUM IN SUPPORT OF REHEARING

In its March 18, 2009, Opinion and Order, the Commission stated:

If the Commission is going to require that the electric utilities retain these generating assets, then the Commission should also allow the Companies to recover Ohio customers' jurisdictional share of any costs associated with maintaining and operating such facilities. (Opinion and Order, p. 52).

This ruling resulted from CSP's proposal to acquire authority to sell or transfer these mercantile generating facilities. As CSP's witness, Mr. Baker, explained, the Waterford plant was purchased in 2005 and Darby was purchased in 2007. (Co. Ex. 2 A, p. 42). "Neither of these units have ever been in CSP's rate base and customers' generation rates have not reflected CSP's investment in the plants or the expenses of operating and maintaining the plants." (*Id.*) With no rate recovery, these plants were purchased in anticipation of generation rates being market-based under SB 3. CSP "took the risk on these plants and therefore, ... its appropriate for us to have the authority to, if we choose, to transfer or sell the assets at our discretion." (Tr. XIV, p. 155). In rebuttal testimony, Mr. Baker testified that if CSP is prohibited from selling or transferring these units, any expense not recovered in the Fuel Adjustment Clause (FAC) should be recovered in the non-FAC rate. (Co. Ex. 2 E, p. 21).

In its March 18, 2009, Opinion and Order, the Commission denied CSP the authority it sought under §4928.17 (E), Ohio Rev. Code. However, based on its reasoning quoted above, it authorized cost recovery associated with Waterford and

Darby. The Company viewed the Commission's ruling as a fair balance regarding that issue and did not challenge the ruling on rehearing.

Now, however, the Commission's Entry on Rehearing has completely upset the balance it struck in its Opinion and Order. If the Commission were going to revoke the rate authorization it provided in the Opinion and Order it also should have reconsidered its ruling as it related to authority to sell or transfer the Waterford and Darby facilities and granted CSP the authority it sought under §4928.17 (E), Ohio Rev. Code, regarding Waterford and Darby. Having failed to do so, the Commission's orders are unreasonable and unlawful and should be modified on rehearing to authorize the sale or transfer of Waterford and Darby.

It is unreasonable to force CSP to keep these generating units and not be able to recover any costs associated with these units. The Commission already has recognized this. Therefore, with the cost recovery provision of the Opinion and Order being revoked on rehearing, the fair and reasonable course of action now is to authorize CSP to sell or transfer those units.

Authorization of a sale or transfer also is legally required if the Commission is not allowing cost recovery associated with these merchant plans. The unbundling process required by S.B. 3 resulted in a generation rate that reflected previously-determined cost recovery for CSP's generating facilities. The generation rates under the "rate plan" (the Standard Service Offer in effect on the effective date of S.B. 221) did not include recovery of costs associated with maintaining and operating Waterford or Darby or of a return on CSP's investment in those plants. With the Commission's reversal in its Entry on Rehearing of the Waterford and Darby cost recovery, CSP is unlawfully put in the

position of being required to retain these facilities but not being permitted to make any adjustment to the rate plan rate to recover costs of maintaining and operating those units or recover a return on the investment in those plants. On rehearing the Commission should rectify this unlawful situation by granting CSP the authority it sought in the proceeding to sell or transfer Waterford and Darby.

Respectfully submitted,



Marvin I. Resnik

Steven T. Nourse

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1606

Telephone: (614) 716-1608

Fax: (614) 716-2950

Email: miresnik@aep.com

stnourse@aep.com

Daniel R. Conway

Porter Wright Morris & Arthur

Huntington Center

41 South High Street

Columbus, Ohio 42315

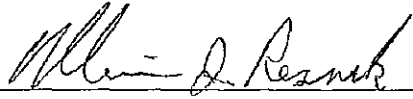
Fax: (614) 227-2100

dconway@porterwright.com

Counsel for Columbus Southern Power Company
and Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Application for Rehearing was served by electronic mail upon the individuals listed below this 31st day of July 2009.


Marvin I. Resnik

<u>sbaron@jkenn.com</u>	<u>ricks@ohanet.org</u>
<u>lkollen@jkenn.com</u>	<u>tobrien@bricker.com</u>
<u>charlieking@snavely-king.com</u>	<u>david.fein@constellation.com</u>
<u>mkurtz@bklawfirm.com</u>	<u>cynthia.a.fonner@constellation.com</u>
<u>dboehn@bklawfirm.com</u>	<u>mhpetricoff@vssp.com</u>
<u>grady@occ.state.oh.us</u>	<u>smhoward@vssp.com</u>
<u>etter@occ.state.oh.us</u>	<u>cgoodman@energymarketers.com</u>
<u>roberts@occ.state.oh.us</u>	<u>bsingh@integrysenergy.com</u>
<u>idzkowski@occ.state.oh.us</u>	<u>lbell33@aol.com</u>
<u>stnourse@aep.com</u>	<u>kschmidt@ohiomfg.com</u>
<u>dconway@porterwright.com</u>	<u>sdebroff@sasllp.com</u>
<u>jbentine@cwslaw.com</u>	<u>apetersen@sasllp.com</u>
<u>myurick@cwslaw.com</u>	<u>sromeo@sasllp.com</u>
<u>mwhite@cwslaw.com</u>	<u>bedwards@aldenlaw.net</u>
<u>khiggins@energystrat.com</u>	<u>sbloomfield@bricker.com</u>
<u>barthroyer@aol.com</u>	<u>todonnell@bricker.com</u>
<u>gary.a.jeffries@dom.com</u>	<u>cvince@sonnenschein.com</u>
<u>nmoser@theOEC.org</u>	<u>preed@sonnenschein.com</u>
<u>trent@theOEC.org</u>	<u>ehand@sonnenschein.com</u>
<u>henryeckhart@aol.com</u>	<u>erii@sonnenschein.com</u>
<u>nedford@fuse.net</u>	<u>tommy.temple@ormet.com</u>
<u>rstanfield@nrdc.org</u>	<u>agamarra@wrassoc.com</u>
<u>dsullivan@nrdc.org</u>	<u>steven.huhman@morganstanley.com</u>
<u>tammy.turkenton@puc.state.oh.us</u>	<u>dmancino@mwe.com</u>
<u>thomas.lindgren@puc.state.oh.us</u>	<u>glawrence@mwe.com</u>
<u>werner.margard@puc.state.oh.us</u>	<u>gwung@mwe.com</u>
<u>john.jones@puc.state.oh.us</u>	<u>stephen.chriss@wal-mart.com</u>
<u>sam@mwncmh.com</u>	<u>lgearhardt@ofbf.org</u>
<u>lmcaster@mwncmh.com</u>	<u>cmiller@szd.com</u>
<u>jclark@mwncmh.com</u>	<u>gdunn@szd.com</u>
<u>drinebolt@aol.com</u>	<u>aporter@szd.com</u>
<u>cmooney2@columbus.rr.com</u>	