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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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

INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA
APPLICATION FOR REHEARING OF COLUMBUS SOUTHERN POWER COMPANY

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MEMORANDUM CONTRA

I. INTRODUCTION

The electric security plan ("ESP") proposal of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively, "Companies" or "AEP-Ohio") requested authority to sell or transfer two recently-acquired generating facilities, the Waterford Energy Center ("Waterford") and the Darby Electric Generating Station ("Darby"). The Industrial Energy Users-Ohio ("IEU-Ohio") and all other parties opposed AEP-Ohio's request for authority to sell or transfer these assets until the Companies provide sufficient detail to permit evaluation on how the sale/transfer might serve to advance state policy. In its March 18, 2009 Opinion and Order, the Public Utilities Commission of Ohio ("Commission") agreed and held that AEP-Ohio's requests were premature and that AEP-Ohio should file a separate application when it wishes to

sell or transfer the generation facilities.¹ However, the Commission permitted AEP-Ohio to recover, through its non-fuel adjustment clause ("FAC") mechanism, Ohio customers' jurisdictional share of any costs associated with maintaining and operating AEP-Ohio's generation facilities, including the Waterford and Darby facilities.²

IEU-Ohio filed an Application for Rehearing from the Commission's decision to permit AEP-Ohio to recover costs associated with the Waterford and Darby facilities.³ On rehearing, the Commission agreed with IEU-Ohio that the Companies did not demonstrate "that their current revenue is inadequate to cover the costs associated with the generating facilities, and that those costs should be recoverable through the non-FAC portion of the generation rate from Ohio customers."⁴ Thus, the Commission ordered AEP-Ohio to modify its ESP to remove the annual recovery of \$51 million of expenses, including associated carrying charges, related to these generation facilities.⁵

On July 31, 2009, CSP filed an Application for Rehearing from the Commission's Entry on Rehearing. CSP argues on rehearing that it is unreasonable and unlawful for the Commission to not permit it to recover costs associated with the Darby and Waterford facilities if the Commission is not going to grant its request for authority to sell or transfer the Darby and Waterford facilities.⁶ CSP first asserts that it is unreasonable for the Commission to "force CSP to keep these generating units and not be able to

¹ Opinion and Order at 52.

² Opinion and Order at 52.

³ IEU-Ohio Application for Rehearing at 19-21, 35-38.

⁴ Entry on Rehearing at 35.

⁵ Entry on Rehearing at 35-36.

⁶ CSP Application for Rehearing at 3-4.

recover any costs associated with these units.”⁷ CSP claims it is only “fair and reasonable” to grant CSP the authority to sell or transfer the Darby and Waterford units since cost recovery authority has been revoked. Additionally, CSP argues that the Commission is required by law to authorize the sale or transfer of the Darby and Waterford facilities if it does not permit CSP to recover costs associated with these facilities.⁸ Finally, CSP observes that it 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.”⁹

II. ARGUMENT

A. CSP is not entitled to any form of cost recovery or return on investment on its generation assets, including the Darby and Waterford facilities.

First and foremost, as AEP-Ohio asserted throughout this proceeding, generation rates are no longer cost-based.¹⁰ AEP-Ohio said it best itself when it stated:

There is no generally applicable cost-of-service standard, least cost standard or just and reasonable standard set out in SB 221. Nonetheless, some intervenors have argued that the reference to “reasonably priced retail electric service” in Sec. 4928.02 (A), Ohio Rev. Code, has the effect of resurrecting traditional cost-of-service principles that had been applicable to generation service as part of bundled rate regulation prior to the enactment of Am. Sub. S.B. No. 3 (SB 3). This argument fails to recognize that the “reasonably priced” reference in this division was present in SB 3 and was applicable to a market-based pricing regime.

⁷ *Id.* at 3.

⁸ *Id.* at 3-4.

⁹ *Id.*

¹⁰ See Tr. Vol. XI at 86-87.

Similarly, there is no general "public interest" standard for approving an ESP. The public interest is served if the ESP is more favorable in the aggregate than the expected results of an MRO.¹¹

CSP's argument that it is entitled to some sort of cost-based recovery when it has adamantly asserted that Amended Substitute Senate Bill 221 ("SB 221") does not set out a cost-based standard by which its revenue requirement should be set is contrary to Ohio law and the very basis upon which CSP has objected to the positions of certain parties in this proceeding.

SB 221 provides the Commission with the alternative authority to establish pricing for competitive services and this alternative authority has been described as a hybrid. SB 221 does not require the Commission to selectively increase rates (which are not based on costs) because the non-cost-based rates do not reflect a particular category of costs. Even if default generation supply service was priced pursuant to traditional ratemaking concepts, the traditional ratemaking process does not track costs by individual category; it produces a regulatory authorization to collect revenue through the application of rates and charges to the service provided by the utility. Once the ratemaking process has produced authority to bill and collect revenue for service, the rates and resulting revenue are presumed to be reasonable (for both the utility and customers).¹² A party seeking to increase the total revenue has the burden of proof and this allocation of the burden of proof is repeated in Section 4928.143(C), Revised Code. A showing that a particular category of costs is not currently reflected in rates may be, circumstantially speaking, some indication that current rates and revenue may not

¹¹ AEP-Ohio Initial Brief at 15 (December 30, 2008).

¹² Section 4909.03, Revised Code. See also IEU-Ohio's cross-examination of Commission Staff Witness Mr. Cahaan at Tr. Vol. XII at 221-222.

provide adequate compensation, but it is not proof that current rates and charges, and the revenue derived therefrom, are inadequate or unreasonable.

The Commission's Entry on Rehearing correctly points out that the Companies "have not demonstrated that their current revenue is inadequate to recover the costs associated with the generating facilities, and that those costs should be recoverable through the non-FAC portion of the generation rate from Ohio customers."¹³ On the contrary, the information that is in the record shows that AEP-Ohio is fully recovering all of its costs and is collecting a very healthy return on equity (using balance sheet equity values that include all interests in generating assets).

As AEP-Ohio itself pointed out, generation rates are no longer cost-based. CSP has not shown that its approved ESP, as modified by the Entry on Rehearing, is no longer more favorable in the aggregate than a market rate option ("MRO") plan and therefore CSP has not demonstrated that the Commission's Entry on Rehearing was unlawful or unreasonable. Accordingly, the Commission should deny CSP's Application for Rehearing.

B. It is not unlawful or unreasonable for the Commission to deny CSP cost recovery related to the Darby and Waterford facilities without authorizing CSP to sell or transfer these facilities.

CSP contends that the Commission must grant it authority to sell or transfer the Waterford and Darby facilities because the Commission is not permitting it to recover costs associated with these facilities. Section 4928.17(E), Revised Code, states that "No electric distribution utility shall sell or transfer any generating asset it wholly or partly owns at any time without obtaining prior commission approval." CSP cites no statutory

¹³ Entry on Rehearing at 35.

link (because there is none) between cost recovery and transfer authority. Therefore, the Commission should deny CSP's Application for Rehearing.

The Commission properly found that AEP-Ohio's request for authority to sell or transfer the Darby and Waterford facilities (as well as the other facilities that AEP-Ohio sought authority to sell or transfer) is premature.¹⁴ CSP's Application for Rehearing does nothing to further explain why its current request is not also premature. Nor does CSP's Application for Rehearing provide additional details on a proposed sale or transfer or how the sale or transfer might serve to advance the state policy in Section 4928.02, Revised Code.

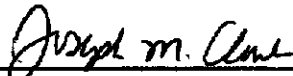
Contrary to CSP's assertions in its Application for Rehearing, the Commission is not required to authorize CSP to sell or transfer the Darby and Waterford facilities if the Commission does not grant CSP cost recovery for expenses related to those facilities. The hybrid ratemaking approach contained in SB 221 does not impose such a requirement on the Commission. CSP's argument lacks merit and should be denied inasmuch as CSP has not demonstrated that the Commission's Entry on Rehearing is unlawful or unreasonable.

¹⁴ Opinion and Order at 52.

III. CONCLUSION

For the reasons explained above, IEU-Ohio respectfully requests the Commission deny CSP's Application for Rehearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Application for Rehearing of Columbus Southern Power Company* was served upon the following parties of record this 10th day of August, 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.


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