

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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.)

SECOND ENTRY ON REHEARING

The Commission finds:

- (1) On July 31, 2008, Columbus Southern Power Company (CSP) and Ohio Power Company (Ohio Power) (jointly, AEP-Ohio or the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. The application was for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (2) On March 18, 2009, the Commission issued its opinion and order (March Order) in these matters approving, with modifications, AEP-Ohio's proposed ESP. The Commission amended, nunc pro tunc, its March Order on March 30, 2009.
- (3) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (4) On April 16, 2009, and April 17, 2009, applications for rehearing of the March Order were filed by numerous parties. On May 13, 2009, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing. By entry on rehearing issued July 23, 2009, the Commission granted, in part, and denied, in part, the various applications for rehearing of the March Order (July Entry).

- (5) The Companies and Industrial Energy Users-Ohio (IEU) filed applications for rehearing of the Commission's July Entry on July 31, 2009, and August 17, 2009, respectively. IEU and the Ohio Consumers' Counsel (OCC) filed memoranda contra the Companies' request for rehearing on August 10, 2009. The Companies filed a memorandum contra IEU's application for rehearing on August 27, 2009.
- (6) By entry issued August 26, 2009, the Commission determined that the applications for rehearing presented sufficient reason to warrant further consideration of the issues raised therein. Furthermore, to facilitate the concurrent consideration of the applications for rehearing filed by AEP-Ohio and IEU, the Commission granted the applications for rehearing. In this entry on rehearing, the Commission addresses the merits of the issues raised by AEP-Ohio and IEU.

Waterford and Darby Generating Assets

- (7) In its March Order, the Commission found AEP-Ohio's request to transfer the Waterford Energy Center (Waterford) and the Darby Electric Generating Station (Darby) facilities premature and directed CSP to file a separate application for authority to sell or transfer the generating assets. However, the Commission concluded that CSP should be allowed to recover Ohio customers' jurisdictional share of costs associated with the maintenance and operation of Waterford and Darby (March Order at 51-52). IEU argued on rehearing that the Commission's decision to allow CSP to recover costs for the Waterford and Darby facilities lacked record evidence and the record lacked any demonstration of need. Upon further review of the issue, the Commission concluded that the Companies had not demonstrated that their revenue is inadequate to cover the costs associated with the Darby and Waterford facilities and directed the Companies to reduce the annual recovery of expenses in the ESP by \$51 million including associated carrying charges related to the facilities (July Entry at 35-36).
- (8) AEP-Ohio argues that the July Entry is unlawful and unreasonable to the extent that the Commission revoked the Companies' ability to recover the costs associated with the Waterford and Darby plants without reconsidering the

Companies' authority to sell or transfer the plants pursuant to Section 4928.17(E), Revised Code.

The Companies note that the facilities were purchased in anticipation of generation rates being market-based under Amended Substitute Senate Bill No. 3 (SB 3) and have never been included in CSP's rate base. Further, the Companies offered testimony which states that Ohio customers' generation rates do not reflect CSP's investment in the plants or the expense of operating and maintaining the plants. The Companies argue that in light of the Commission's revocation of CSP's authority to recover Ohio customers' jurisdictional share of the costs associated with the Darby and Waterford facilities, the Commission should authorize CSP to sell or transfer the facilities in accordance with Section 4928.17(E), Revised Code. Further, the Companies claim that the Commission is legally required to authorize the sale or transfer of the generating assets if the Commission will not allow cost recovery for the generating assets (Cos. App. 2-4).

- (9) In response, IEU argues that, as the party seeking an increase in the total amount of allowable revenue, AEP-Ohio has the burden of proof to demonstrate that the existing rates fail to produce adequate revenue. IEU adds that a mere demonstration that a particular cost is not currently reflected in the electric utility's existing rates may suggest, but is not evidence, that the revenues do not provide adequate compensation. Furthermore, IEU argues that Amended Substitute Senate Bill No. 221 (SB 221) does not establish or maintain a cost-of-service, least cost service, or just and reasonable service standard as was done with traditional ratemaking or bundled rate regulation pursuant to SB 3. IEU reasons, therefore, that AEP-Ohio's claim that it is entitled to some sort of cost-based recovery for the generating assets is contrary to Ohio law and other claims made by the Companies (IEU Memo Contra at 3-6).

OCC, in its memorandum contra, argues that the July Entry merely recognized that under Section 4928.143(C)(1), Revised Code, the Companies bear the burden of proof in this case and have failed to meet that burden of proof. OCC argues the Companies' request for authorization to sell or transfer the

Waterford and Darby facilities at some future date, without filing or complying with the applicable rules that govern such a transfer, is inappropriate. OCC reasons that, if and when the Companies have developed a plan to sell or transfer, rather than just a request for pre-approval, it should file the plan pursuant to the rules adopted by the Commission. OCC contends that following the rules enacted on this very issue will give interested parties the opportunity to fully explore the implications of the sale or transfer (OCC Memo Contra at 1-3). Accordingly, IEU and OCC argue that the Companies' application for rehearing should be denied.

- (10) While the Commission ultimately concluded that the Companies failed to demonstrate that the revenue to be received was inadequate to cover the costs associated with the Darby and Waterford facilities and, therefore, the ESP was modified, the Commission did not prohibit the Companies from selling or transferring the facilities. The Commission directed the Companies to make a separate application for approval to sell or transfer the facilities, consistent with the requirements of Section 4928.17(E), Revised Code. Our decision in the March Order and the July Entry was based on the Companies' testimony that there was not a "present plan to exercise" the authority to sell or transfer the Darby or Waterford plants and the Staff's observation that the transfer or sale of the facilities could have a potential financial and policy impact at the time of the transfer (Cos. Ex. 2-A at 42; Staff Ex. 7 at 3). AEP-Ohio has not presented any reason in its request for rehearing that convinces the Commission to reverse its March Order or the July Entry to the extent that the Commission concluded that the Companies' request for authority to transfer or sell the facilities is premature. When the Companies have established a plan to exercise their authority to sell or transfer the facilities, they should file such plan with the Commission for our consideration as required by Section 4928.17(E), Revised Code. Accordingly, AEP-Ohio's application for rehearing is denied.

PJM Demand Response Program

- (11) In its application for rehearing, IEU asserts that the July Entry unlawfully and unreasonably prohibits AEP-Ohio customers,

taking service pursuant to reasonable arrangements, from participating in the PJM demand response program (DRP). IEU argues that it is unreasonable for the Commission to prohibit customers under reasonable arrangements from participating in the PJM DRP until the Commission considers the issue, as a whole, in a separate proceeding, because the Commission believes that it lacks sufficient information or a reasonable basis to make such a determination. Further, IEU recommends that the Commission address any concerns that it has about customers with reasonable arrangements participating in the PJM DRP on a case-by-case basis, pursuant to the Commission's authority under Section 4905.31, Revised Code (IEU App. at 5-7).

IEU also argues that the Commission's July Entry violates Section 4903.09, Revised Code, to the extent that it fails to provide any citation to record evidence or to provide an explanation for the Commission's decision to prohibit customers with reasonable arrangements from participating in the PJM DRP (*Id.* at 7-9).

- (12) AEP-Ohio notes that the July Entry explains the Commission's rationale regarding PJM DRP participation as a need to further balance the potential benefits to PJM DRP participants and the costs to AEP-Ohio's ratepayers. In the context of the numerous pages of testimony, the summation of the arguments, and rationale included in the July Entry at 36-41, AEP-Ohio posits that the explanation is adequate to support the temporary, partial restriction on retail participation in the PJM DRP in light of the multitude of concerns raised in this matter. Further, AEP-Ohio reiterates, as Staff testified, that the Companies and AEP-Ohio's customers incur costs associated with retail customer participation in the PJM DRP, as the Companies count the customer's load as firm under the Companies' Fixed Resource Requirements (FRR) that is reflected in AEP-Ohio's retail rates. Thus, AEP-Ohio requests that IEU's application for rehearing of this issue be denied (Cos. Memo Contra at 2-6).
- (13) The March Order relies on Staff's testimony, which states that the PJM DRP cost AEP-Ohio's other customers as the load of such PJM program participants continues to count toward the Companies' FRR option and such cost is reflected in AEP-

Ohio's retail rates (Tr. Vol. VIII at 165-166; March Order at 54). The March Order and the July Entry explain the factors that the Commission relied upon to reach its decision on this issue, as well as to support the refinement of the decision in the July Entry. Recognizing that the PJM DRP offers a benefit to Ohio program participants, in the March Order, the Commission also recognized that the record indicated that the PJM DRP costs AEP-Ohio's other customers. It is indeed reasonable, upon recognition of these facts that, upon further consideration of the issue, the Commission extended its directive to prohibit AEP-Ohio's customers taking service pursuant to reasonable arrangements, which reflect a discount of the retail tariffed rate, from also participating in and receiving additional benefits from the PJM DRP at the expense of AEP-Ohio's other customers. Although the Commission cannot, at this time, quantify the costs and benefits of the PJM DRP to AEP-Ohio's customers, until the Commission further evaluates and addresses the issue, we cannot ignore the fact that reasonable arrangement customers, who already receive service at a discounted rate, are also securing benefits from the PJM DRP at the expense of other customers. As IEU acknowledges, the Commission is vested with the authority to approve such reasonable arrangements pursuant to Section 4905.31, Revised Code. It is pursuant to such authority, and based on certain evidence cited in this entry, that the Commission finds it necessary and appropriate, at this time, to continue to limit reasonable arrangement customers from participating in the PJM DRP, until the Commission further evaluates the issue. For these reasons the Commission finds that the March Order and the July Entry satisfy the requirements of Section 4903.09, Revised Code, and, thus, we affirm our decision in the July Entry and deny IEU's request for rehearing on this issue.

"Acceptance" of Modified ESP Rates

- (14) In its last assignment of error, IEU contends that the July Entry unlawfully failed to prohibit AEP-Ohio from accepting the benefits of the rates approved in the ESP while simultaneously preserving its right to withdraw the ESP. On April 20, 2009, IEU filed an application for immediate rate relief on the basis that AEP-Ohio had filed an application for rehearing asserting that various aspects of the March Order were unreasonable and

unlawful and had began billing customers, in accordance with the Commission's March 30, 2009 entry approving revised tariffs, while reserving judgment on whether to withdraw or accept the ESP as modified by the Commission. IEU asserts that Section 4928.141, Revised Code, requires the prior rate plan to continue until a MRO or ESP is approved by the Commission and accepted by the electric utility (IEU App. at 9-12).

- (15) AEP-Ohio responds that nothing in Chapter 4928, Revised Code, dictates that an electric utility must forego its right to file an application for rehearing of an order modifying its ESP and continue to charge its pre-ESP rates while the Commission considers the arguments raised by the other applications for rehearing. By entry issued March 30, 2009, the Commission authorized AEP-Ohio to charge and collect tariffed rates in compliance with the modified ESP, as amended by the March Order. Thus, the Companies contend that, by law, it was required to charge and collect the authorized SSO rates under Section 4905.32, Revised Code. To challenge the rates implemented pursuant to the March Order, AEP-Ohio states IEU was required to file an application for rehearing of the March 30, 2009 entry and since IEU did not file an application for rehearing of the March 30, 2009 entry and did not raise the issue in its application for rehearing filed on April 16, 2009, AEP-Ohio states that the argument is moot and should be denied (Cos. Memo Contra at 7-9).
- (16) Given that AEP-Ohio has not filed notice with the Commission that it wishes to withdraw its ESP, as modified and approved, it is unnecessary to address this issue on rehearing. Accordingly, IEU's request for rehearing on this issue is denied.

It is, therefore,

ORDERED, That the applications for rehearing are denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties and other interested persons of record.

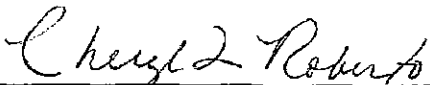
THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman


Paul A. Centolella


Ronda Hartman Fergus


Valerie A. Lemmie


Cheryl L. Roberto

GNS/vrm

Entered in the Journal

NOV 04 2009



Renee J. Jenkins
Secretary