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IN THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matters of the Complaints:

CCM Properties c/o Martin Management
Services,

Complainant,

v.

American Electric Power,

Respondent,

and

Reg Martin, Court Appointed Receiver
for 90 North High Partners, LLC,

Complainant,

v.

American Electric Power,

Respondent.

Case No.: 11-1185-EL-CSS, and

Case No.: 11-883-EL-CSS

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REPLY BRIEF OF AMERICAN ELECTRIC POWER

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INTRODUCTION

It is clear that this case involves the clashing of two separate and important areas of state law — public utility and receivership. In the effort to explain the history and past practices of both sides a lot of lingo and history can be provided to support that way things should and have been done in each respective field. But the case before the Commission right now has a receiver with the burden of proof to show why its statutory authority and practices should trump that of the Public Utilities Commission of Ohio. Complainant fails to show that receivership law would preempt the specific authority of the Commission.

Responding to Complainant's position on the agreed issues, AEP first generally notes that Complainant's brief acknowledges that a receiver is merely a caretaker of property under the supervision of the Court. This is consistent with how AEP treats receivers. There is no legal or practical reason to treat them differently than any other caretaker or manager in charge of property it does not own. In fact treating them differently creates an unworkable system where responsibility can be avoided constantly by a switch in management. Complainant fails to provide any position on the final three issues including the issues raised by the Administrative Law Judge. It would be inappropriate for Complainant to address those issues on reply after waiving them in the initial round of filing.

LAW AND ARGUMENT

- 1. Whether Ohio Receivership Law Preempts the Commission's Jurisdiction and Orders Under Title 49 of the Ohio Revised Code.**
- 2. Whether the Commission's Rules and Regulations Preclude AEP from Treating a Receiver as a New Customer on an Account Once He is Appointed as Receiver, and**
- 3. Whether a Receiver is Merely an Extension of an Existing AEP Customer or Whether a Receiver is a New Customer Who is Entitled to Have Service Transferred Into His Name Upon His Appointment and Treated as a New Customer.**

Complainant's arguments in support of its position here merely underscore the confusion that is endemic when a bank forecloses on a property that is an ongoing business. A receiver is absolutely necessary to sort through all of the chaos, protect the secured lender's rights in the property, make sure the property does not deteriorate during the pendency of the foreclosure, and then make sure the property gets sold in a reasonable manner and the proceeds distributed to the appropriate parties. Nothing in this description of a receiver's duties is inconsistent with AEP's tariff, Title 49 of the Revised Code, or AEP's policy of treating a receiver as a new manager.

What is inconsistent with AEP's tariff and the Revised Code, is Complainant's position that it can step into the shoes of a customer, yet refuse to pay arrearages and/or deposits, and continue to receive electric service. Complainant incorrectly argues that AEP is trying to get a preference over the other creditors in the receivership and getting preferential treatment. That is false. First, as stated before, Complainant's position attempts to turn a vague receivership statute into a pseudo-bankruptcy without any statutory authority. Secondly, AEP is not trying to get a preference over other creditors in the foreclosure, it is just seeking to provide service pursuant to the terms of its tariff

(i.e. AEP gets paid for electricity it delivers and disconnects service to customers or accounts that do not pay to collect past due amounts and avoid unpaid future amounts.) If AEP was a paper manufacturer supplying paper to the foreclosed company, no one would argue that it had to continue to continue to supply paper going forward without being paid for paper already supplied and risk not being paid on a going forward basis. Third, Complainant wrongly asserts that “AEP’s rules make it clear that a receiver is a new legal entity, AEP is REQUIRED to treat him a new customer. . .” There is nothing in AEP’s “rules” that indicates that a receiver is a new legal entity at all. Complainant admits that receiver is a disinterested caretaker appointed by the Court, neither representing the bank or its mortgagee in a foreclosure (Complainant’s Brief, page 11).

Complainant is not a new entity requesting service for itself, but rather a court appointed caretaker who has been tasked with preserving the property, which task includes paying the utility bills. The receiver has a choice, and it can choose to not maintain the electric account. However, if an individual receiver decides not to prioritize electric service as a necessary element to maintain the property then the risk is that the power will be disconnected. That is the choice being made by the receiver.

AEP is merely ensuring that the customer on the premises—whether being managed by a receiver or not—gets treated like every other customer under AEP’s tariff. If a customer has an arrearage, it has to bring that current and pay a deposit in order to continue to receive service. Plain and simple, there is nothing in the Ohio Revised Code that indicates that the legislature intended for a receiver to have the power to interfere with Commission jurisdiction and receive electric outside of the tariff system. A receiver merely steps into the shoes of the entity over which it was appointed receiver. Nothing in

Complainant's brief says anything different. As stated before, AEP's practice is in accordance with these principles.

Complainant's argument that it was not really the receiver for the customer for the Larwill property, just the receiver for the property (Brief of Complainant, page 6) merely underscores the logic of not treating a receiver as a new customer. AEP's practice of treating the receiver as a court appointed manager of a property, not a new customer, avoids these sorts of convoluted issues. Whoever is legally responsible for the electric service at a location at the time that location goes into foreclosure is still legally responsible for the electric service until the property is sold, despite the appointment of a receiver. The utility cannot have a customer that is not responsible for the account but that is essentially what Complainant is proposing. Under these circumstances, there is no basis to make a receiver a new customer, as the "old" customer is still ultimately legally responsible for all bills, even those being handled by the receiver.

The system offered by Complainant does not guarantee that a receiver will pay charges incurred post-receivership. As discussed in the initial brief, the facts of this case show that the appointment of a receiver does not necessarily mean the receiver will guarantee payment for services. Complainant can attribute whatever extra-record rationale for why it did not pay post-receivership debt on the Larwell property, but the agreed facts show that Complainant was appointed receiver on August 2, 2010, but did not pay on the account until December 3, 2010. Complainant's own representation that there are two distinct buckets of charges (pre- and post-receivership debt) is not supported by Complainant's own actions. The Commission should see through this result oriented argument and allow utilities to stick to their approved tariffs, only creating a new

customer account when a new customer, not a new manager of the same account, is present and willing to be responsible as a new customer.

Complainant's arguments are based not on law, but what is most expedient for itself. As is clear in Complainant's brief, a receiver is primarily concerned with maximizing the profit on the sale of the property for the benefit of the creditors. (Brief of Complainant, page 8). The Complainant would have the Commission allowing receivers to dictate their own terms under which they receive electric service. This position ignores the cost to AEP's other customers who would end up paying for receiver's special arrangement arrearages through increased rates.

All other customers who are suffering through foreclosures—both residential or commercial—must keep their electric payments current or be disconnected under the terms of AEP's tariff. Complainant would have the Commission make a special exception to AEP's tariff just for foreclosures that have a receiver appointed to manage the foreclosed property.

4. Is the Complainant Required or Authorized by the Court to Pay the Outstanding AEP Utility Bills for the Properties Placed into Receivership Prior to the Appointment of the Complainant?

5. Is AEP Authorized by Statute or Rule to Disconnect Utility Service to the Properties Managed by the Complainant for Failure to Pay the Utility Bills Incurred by the Properties Prior to the Appointment of the Complainant?

6. Why Did AEP Recently Change its Practice of Not Requiring a Receiver to Pay Pre-Receivership Debts? Was it Reasonable to Change its Practice?

Complainant did not address these issues, despite being tasked to do so by the Commission and despite being the Complainant in the case. It is a well established Commission principle that the burden of proof in a complaint proceeding is on the

Complainant. *In the matter of Complaint of Charlene Rundo v. Duke Energy Ohio, Inc.*, Case No. 06-940-GE-CSS, 2008 WL 647808 (Mar. 5, 2008) citing *Grossman v. Pub. Util. Comm.* (1966) 5 Ohio St. 2d 189. Failure to raise a claim in an initial brief of a complaint case by the Complainant should prevent any further consideration of the argument in the proceeding. AEP represents that Complainant has thus waived any right to dispute AEP's position, as it has failed to brief these issues and AEP will have no right to rebut its arguments should it raise them for the first time in Complainant's Reply Brief. Any arguments replying to AEP's initial brief on these matter are improper and should not be allowed.

The arguments provided by Complainant in response to its treatment of the receiver as a new customer continue to highlight the basic faulty premise it is relying upon that distinguishes the outcome it desires versus the proper outcome in this case. In its initial brief Complainant argues:

It is also important to the determination of these cases to note that the receiver was not appointed as the receiver for the AEP customer – he was appointed as receiver for the real estate....AEP retained all of its legal rights to pursue CCM for the past due obligations. However, in the Larwell case AEP scheduled a disconnection of the service following the appointment of a receiver for real estate owned by a completely different entity.

Complainant's Brief at 6. The assumption that Complainant is making is that regardless of the usage on a property that a change in management of the property can erase the obligations or usage of electricity of a property. Taken to its natural end a property could change its management company every month and never pay its bill leaving the utility without any right to disconnect service to avoid increasing unpaid service.

This is not how Commission regulated utility service works. The fact that a new entity is now managing the property does not change the benefit of service and does not void the tools that the Commission provided utilities to collect unpaid bills and avoid the potential for future unpaid service. The other hole in Complainant's argument is that somehow AEP still has all of its legal rights to pursue CCM for its past obligations. That clearly is not the case because when AEP exercised its legal right to disconnect CCM's account the Complainant filed one of these complaints asserting an improper disconnection and sought immediate reconnection. If AEP truly retained all of its legal rights then Complainant had no basis for the reconnection and the complaint case as a whole. The Complainant cannot declare itself a new customer by *fiat* and ignore the relationship in existence when it arrived.

Complainant admits that the Commission has legal jurisdiction over these matters (Page 10 Brief). In spite of this, it then tries to argue that "AEP's tariffs contain nothing which supersedes Ohio receivership law." It is getting this backwards. There is nothing in Ohio receivership law that supersedes AEP's tariff and Revised Code Title 49's regulatory scheme.

CONCLUSION

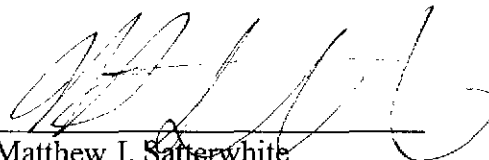
Claimant incorrectly states that AEP does not follow court orders appointing receivership. As stated before, AEP has never violated a receivership order—it intervenes in cases where necessary, and ensures that the orders do not contain provisions in conflict with its tariff. Complainant wants this Commission to cede its jurisdiction over AEP's tariff to the various trial court judges, and to order AEP to stop protecting its tariff.

If his Complaints are granted, each trial judge in each foreclosure would have the authority to order the utilities serving the properties to supply service however that judge feels is appropriate. Utilities would have to accommodate their practices to suit each judge's whim, as the receivership statute is silent on this issue. A receivership is not a bankruptcy where the rules and procedures are clearly spelled out pursuant to the Federal government. Also, unlike the bankruptcy code, the receivership statute is a vague general statute that does not usurp the very specific Title 49 of the Ohio Revised Code.

AEP contends that the better position is for the Commission to continue to regulate utilities and for utilities to provide service based on their tariffs. There is no legal or practical reason to treat customers who have receivers appointed for them any differently from any other customer. Complainant attempts to argue that it is necessary for them to be treated differently because if they have to pay for the electric use of the subject of the receiverships use, then they might have to liquidate the businesses and put people out of work. (Brief of Complainant, page 12). AEP contends that financing foreclosures by providing free electric service is not its job, and its other ratepayers should not be forced to subsidize banks who file foreclosures. The Commission should

retain its authority over utility practices and deny Complainant's request to make receivers exempt from application of AEP's tariff and the Ohio Revised Code.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Matthew J. Satterwhite', is written over a horizontal line.

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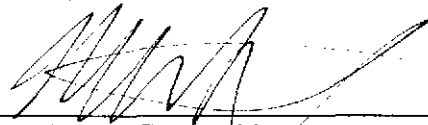
**Counsel for Respondent, American
Electric Power**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by First-Class United States Mail,
postage prepaid, upon the following parties via counsel:

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by ordinary US Mail this 29th day of August, 2011.


Matthew J. Satterwhite