

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)	
in the Form of an Electric Security Plan.)	

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority.)	

**INDUSTRIAL ENERGY USERS-OHIO'S, FIRST ENERGY SOLUTIONS CORP.'S
AND APPLALACHIAN PEACE AND JUSTICE NETWORK'S
MEMORANDUM CONTRA OHIO POWER COMPANY'S REQUESTS FOR WAIVERS**

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MEMORANDUM CONTRA OHIO POWER COMPANY'S REQUESTS FOR WAIVERS**

I. INTRODUCTION

On March 30, 2012, Ohio Power Company ("OP") filed an Application ("March 30 Application") to establish an electric security plan ("ESP"). Contained in OP's March 30 Application are three different waiver requests from the Public Utilities Commission of Ohio's ("Commission") rules: (1) a waiver, as it pertains to the Turning Point Solar project and the Generation Resource Rider ("GRR"), of Rule 4901:1-35-03(C)(3), Ohio Administrative Code ("O.A.C."), which requires an ESP application to include projected rate impacts by customer class/rate schedule for the duration of the ESP; (2) a waiver of Rule 4901:1-35-03(C)(9)(b), O.A.C., which requires an ESP application to include certain information pertaining to the generating facility for which the electric distribution utility ("EDU") is seeking a non-bypassable surcharge under Sections 4928.143(B)(2)(b)-(c), Revised Code; and (3) a waiver of any other Commission rule that its March 30 Application fails to comply with.

Although the Commission may grant a waiver of its rules for good cause, OP has failed to provide any legitimate rationale why the Commission should grant the waiver requests. Because OP has failed to offer any legitimate reason for the waivers, the Commission should reject OP's requests and require it to supplement the March 30 Application.¹

II. ARGUMENT

A. OP Has Failed to Offer Any Legitimate Reason Why the Commission Should Grant OP's Waiver Requests.

The Commission should deny all three of OP's waiver requests because OP has failed to demonstrate good cause as to why the Commission should grant the waivers. Rule 4901:1-35-02, O.A.C., provides that "[t]he commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, *for good cause shown.*" (Emphasis added.) Initially, OP claims that the "SSO filing requirements do not apply" to the March 30 Application. The Commission, however, lacks the statutory authority to approve a standard service offer ("SSO") pursuant to Section 4928.141, Revised Code, if it has not been presented with an application to establish a market rate offer ("MRO") under Section 4928.142, Revised Code, or an application to establish an ESP under Section 4928.143, Revised Code. Additionally, the Commission's standard filing requirements apply to all applications to establish an SSO.

Regardless of whether the Commission adopts OP's argument that the March 30 Application is not a new ESP application, there is also no reason why an amendment to

¹ The Office of the Ohio Consumers' Counsel ("OCC") supports but does not join this memorandum contra.

an existing ESP should not have to comply with the standard filing requirements. The standard filing requirements require necessary and essential information to be filed along with an SSO application. This information allows all parties an ability to thoroughly review the filing and provides a certain degree of transparency to the application.

The rules that require that the applicant provide this information are rooted in sound regulatory policy. Transparency and openness are fundamental cornerstones of the Commission's obligation to the public it serves.² By seeking waivers of the filing requirements under Rule 4901:1-35-03, O.A.C., however, OP is again attempting to hide the true costs and impacts that the March 30 Application, in general, and the Turning Point Solar project, in particular, will have on customers.³ This attempt to avoid

² See *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order at 26 (November 5, 2008) ("The Commission believes that the proposed rules, as modified herein, provide for regulations, standards, and enforcement of those regulations and standards that will provide for a transparent and public process, which should result in more accountability as well as greater reliability of the electric utilities' distribution systems."); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, et al.*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 25 (December 14, 2011) (enough facts existed to demonstrate settlement discussions were open and transparent supporting a finding that the Stipulation was in the public interest); Section 4905.17, Revised Code (Commission records are open to the public); see also *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc., and Related Matters*, Case Nos. 05-221-GA-GCR, *et al.*, Opinion and Order, *Concurring Opinion of Commissioner Paul A. Centolella* at 2 (January 23, 2008) ("Parties before this Commission have a responsibility to promote openness, transparency, and public confidence in the regulatory process."); Rule 4901:1-35-08, O.A.C. (competitive bid solicitation process should be open, fair, and transparent).

³ OP has demonstrated a consistent desire to delay and prevent any analysis regarding the impact of the Turning Point Solar project. In its first attempt to establish an ESP in this proceeding, OP took the position that it need not provide financial information regarding the project. Application at 11 (January 27, 2011). Once that position was ultimately rebuffed, OP then took the position that the impact of the project should not be reviewed in this proceeding (a position rejected by Staff and the Commission). See Opinion and Order at 30 (December 14, 2011) (OP failed to include the costs of the Turning Point Solar project in the ESP v. MRO test). Again, in OP's long-term forecast report ("LTFR") proceeding, Case Nos. 10-501-EL-FOR, *et al.*, OP stated that the LTFR proceeding was not the appropriate place to review the financial impact of the project. *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-FOR, *et al.*, Joint Motion to Strike Portions of the {C37274:2 }

disclosure follows the recent uproar regarding the process that culminated in approval of the Stipulation, ultimately rejected by the Commission. That process drew great criticism for its lack of transparency and its failure to properly notify customers of the potential rate increases they would face from the ESP. Chairman Snitchler's acknowledgment of this flaw was highlighted in the Commission's press release following its rejection of the Stipulation ESP:

"Our decision effectively hits the reset button on AEP's electric security plan, allows us to start over from the beginning, *ensure that we have a complete picture of any proposal*, and balance the interests of all customers and the utility," Chairman Todd A. Snitchler stated. "Ohio remains committed to continuing down the path towards fully competitive markets."

...

The Commission also acknowledges that small businesses and residential customers were negatively impacted by the order approved last December. Bills for certain customers significantly exceeded what was expected based on the record in the case.

"The evidence in the record inadvertently failed to present a full and accurate record of the actual bill impacts to be felt by customers," Snitchler continued. "This is particularly true with respect to low load factor customers who have high electricity demand for short periods and low usage the rest of the time." (Emphasis added.)⁴

The Commission has been sensitized to the necessity of transparency in this proceeding. Requiring OP to comply with the filing requirements will allow the Commission, Staff, and all interested parties the time necessary to properly review OP's

Testimony of FirstEnergy Solutions Corp. witness Jonathan Lesser and Memorandum in Support of Signatory Parties at 1-2 (March 27, 2012) ("In short, FES's testimony seeks to challenge the establishment of a nonbypassable surcharge that is not being established in this case and therefore is beyond the scope of this proceeding and premature until such surcharge is sought to be established."). Finally, in its March 30 Application filed in this proceeding, OP has again attempted to prevent a financial review of the impact of the Turning Point Solar project. Application at 15-16 (March 30, 2012).

⁴ PUCO Press Release, *PUCO revokes AEP-Ohio electric security plan settlement agreement* (February 23, 2012).

claims. OP has not demonstrated any reason why it should not supply the most up-to-date information. In the spirit of and requirements for fairness and transparency, and in accordance with Commission rules, the Commission should deny OP's waiver requests and require OP to update the March 30 Application with the required information.

Rejecting the waiver requests would be the first step in fulfilling Chairman Snitchler's goal to "ensure that we have a complete picture of any proposal."

B. The Information Regarding Costs and Customer Impacts of the Turning Point Solar Project is Relevant and Necessary to Properly Analyzing an ESP and Conducting the Statutorily Required ESP v. MRO Test.

As noted previously, OP has failed to provide any demonstration of "good cause" for waiving the filing requirements. Moreover, the Commission has already identified the need for OP to provide full disclosure in its prior decisions in this case.

First, it is clear that the Commission should be fully apprised of the rate impacts of the March 30 Application before it takes any action on the application. As the Commission previously determined, the rate impacts of the ESP can be dramatic.⁵ Without a full understanding of those impacts, the parties will not be able to properly analyze individual effects of the proposal, leading to a repeat of the unfortunate results customers faced in early 2012.

Second, the Commission has already determined the need for information regarding recovery of plant addition, *i.e.* the Turning Point Solar project, required by Rule 4901:1-35-03(C)(9)(b), O.A.C. In its presentation to the Commission, OP attempted to exclude the effects of the Turning Point Solar project in its application of the ESP v. MRO test. In its December 14, 2011 Opinion and Order, however, the

⁵ See Entry on Rehearing at 11 (February 23, 2012).

Commission determined that the Turning Point Solar project's rate effects were relevant to the application of the statutory test that the ESP must satisfy under Section 4928.143(C)(1), Revised Code. The Commission found that OP witness Thomas had improperly excluded the costs associated with the Turning Point Solar project from the calculation of the ESP v. MRO test, and categorized the error as a "material flaw[.]"⁶ The Commission, instead, agreed with Staff witness Fortney who testified that it was "reasonable to include an estimated charge for the GRR, as AEP-Ohio has produced a revenue requirement for the Turning Point project."⁷ Ultimately, the Commission relied on Staff witness Fortney's calculation of the ESP v. MRO test, as corrected by FirstEnergy Solutions Corp. ("FES"), which properly included the costs associated with the Turning Point Solar project on the ESP side of the equation.

In analyzing the March 30 Application, the Commission will once again address the propriety of establishing a recovery mechanism for plant additions and the effect of those additions on the statutory test the ESP must pass before the Commission may approve it. OP is seeking approval of the GRR (again),⁸ but has failed to include the effects of the Turning Point Solar project in its ESP v. MRO review (again).⁹ Because OP is seeking the GRR and the Commission must review the ESP "in the aggregate," OP must provide updated information regarding the Turning Point Solar project in compliance with the Commission's filing requirements.

⁶ Opinion and Order at 30 (December 14, 2011).

⁷ *Id.*

⁸ March 30 Application at 8-9.

⁹ *Id.*, Testimony of Laura Thomas at 8.

Because the rate impact due to the Turning Point Solar project as well as other project-specific information is necessary for a proper review of the March 30 Application, the Commission should not grant the specific waiver requests that OP has made. OP has failed to make the necessary demonstration of good cause to waive the rules, and recent experience demonstrates that these waivers are not warranted.

C. OP's Request for a General Waiver of Unspecified Rules Has Already Been Rejected by the Commission in This Proceeding and Should Again be Rejected.

The Commission has already rejected OP's request for a general waiver of unspecified rules in this proceeding and should again reject OP's request. In its March 23, 2011 Entry, the Commission stated:

As to AEP-Ohio's request for a general waiver of any other filing requirement found in Chapter 4901:1-35, O.A.C., to the extent that the relief requested in AEP-Ohio's application requires such a waiver, the attorney examiner finds that AEP-Ohio has failed to make a demonstration of good cause for the request and such request is unsupported. Thus, the request should be denied.¹⁰

Here, OP has again failed to offer any legitimate reason for the Commission to waive the unspecified rules. Therefore, the Commission should again reject OP's general waiver request.

III. CONCLUSION

As discussed above, OP has failed to demonstrate good cause exists to waive the Commission's standard filing requirements and other Commission rules that conflict with OP's March 30 Application. The information OP seeks to suppress is relevant to properly conducting the ESP v. MRO test and is crucial to analyzing the rate impact

¹⁰ Entry at 3 (March 23, 2011).

customers will face from OP's proposal. If OP's waiver requests are granted, the Commission will again be presented an incomplete picture of the actual impact on customers; exactly what the Commission sought to prevent the second time around.¹¹

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¹¹ PUCO Press Release, *PUCO revokes AEP-Ohio electric security plan settlement agreement* (February 23, 2012).
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's, FirstEnergy Solutions Corp.'s and Appalachian Peace and Justice Network's Memorandum Contra Ohio Power Company's Requests for Waivers* was served upon the following parties of record this 10th day of April 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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Summary: Motion Industrial Energy Users-Ohio's, FirstEnergy Solutions Corp's and Appalachian Peace and Justice Network's Joint Memorandum Contra Ohio Power's Requests for Waivers electronically filed by Ms. Vicki L. Leach-Payne on behalf of Darr, Frank P. Mr.