

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Long-Term Forecast) | |
| Report of Ohio Power Company and) | Case No. 10-501-EL-FOR |
| Related Matters.) | |

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| In the Matter of the Long-Term Forecast) | |
| Report of Columbus Southern Power) | Case No. 10-502-EL-FOR |
| Company and Related Matters.) | |

**POST-HEARING BRIEF OF
OHIO POWER COMPANY**

Filed April 25, 2012

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I. Introduction

This case is about whether there is a need for solar resources in Ohio and whether the Stipulation and Recommendation signed by Ohio Power Company¹ (“AEP Ohio” of “Company”) and the Staff of the Public Utilities Commission (“Staff”) (collectively “Stipulating Parties”) properly recognizes that fact. FirstEnergy Solutions Corp (“FES”) and the Industrial Energy Users-Ohio (“IEU”) (collectively “Opposing Parties”) may offer contrary points of view based on an opposition to something that may or may not happen in another case in the future. The Commission should not be distracted by those attempts to divert from the purpose of this proceeding. As the record shows, there is a need for solar resources in Ohio. The Stipulation supports the approval of the Long Term Forecast Report (LTFR) and the analysis provided by the Stipulating Parties. The process established by Commission rules and statute was followed in this case and the

¹ Columbus Southern Power Company merged into Ohio Power Company and are now one entity referred to as Ohio Power Company or AEP Ohio throughout this brief.

Commission should adopt the Stipulation and Recommendation offered in this proceeding.

II. Background

This proceeding dates back to April 15, 2010 when AEP Ohio filed its 2010 LTFR. No action was taken on the filing other than an intervention request by the Office of the Ohio Consumers' Counsel (OCC) until December 20, 2010, when AEP Ohio filed a supplement which included a resource plan and identified the addition of a solar generation resource. Staff then requested a 2010 LTFR hearing to consider the need for the additional solar resource. The Examiner, in the January 26, 2011 Entry, granted the Staff's request for a hearing finding that the addition of over 49 MW of solar energy resources to be a significant addition in generating facilities sufficient to justify review of the Companies' current LTFR. The Opposing Parties subsequently intervened and OCC withdrew from the case.

On November 21, 2011, the Stipulating Parties filed a Stipulation and Recommendation (Stipulation) resolving all issues in the case. The Stipulation recognized the compliance with the administrative code rules governing the LTFR process and the need for the 49.9 MW solar facility, considered by AEP Ohio. The substantive portions of the Stipulation are:

(1) The Commission should make all necessary findings that AEP Ohio's application and subsequent filings in these dockets comply with and satisfy the requirements of R.C. 4935.04 and O.A.C. 4901:5-3 and 4901:5-5 relating to the long-term forecast, resource planning, and related requirements.

(2) Based on resource planning projections submitted by AEP Ohio pursuant to R.C. 4928.143(B)(2)(c), and the provisions of 4928.64(B)(2) that require AEP

Ohio to obtain alternative energy resources including solar resources located in Ohio, the Commission should find that there is a need for the 49.9 MW solar facility known as the Turning Point Solar Project (“Turning Point”) during the LTFR planning period as described herein.

(3) The settlement and resulting Stipulation are a product of serious bargaining among capable, knowledgeable parties with diverse interests and that the settlement, as a package, benefits ratepayers and is in the public interest. The Signatory Parties agree that the settlement package does not violate any important regulatory principle or practice.

(4) AEP Ohio’s application and supplemental filings listed above in support of the Stipulation shall be deemed part of the record in these cases.

The only part of the Stipulation challenged by the Opposing Parties in the testimony and motions filed in this case involve paragraph two of the Stipulation.² The Opposing Parties moved to strike it from the Stipulating Parties Stipulation and limit the proceeding. In the February 29, 2012 Entry, the Attorney Examiner denied that motion and reiterated the procedural schedule. Testimony was filed by the Stipulating Parties on March 9, 2012. Testimony was filed on behalf of FES on March 21, 2012. The hearing was held on March 28, 2012, before Administrative Law Judge Sarah Parrot. A briefing schedule was agreed to by the Parties with initial post-hearing briefs due on April 25, 2012, and reply briefs due May 4, 2012.

² The other portions of the Stipulation are not challenged and should be adopted by the Commission as they are unopposed.

III. Standard of Review

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although it is not binding on the Commission, the terms of such agreements are accorded substantial weight. *See Consumers' Counsel v. Pub. Util Comm.* (1992), 64 Ohio St.3d 123,125, *citing Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered. *Columbus Southern Power Company*, Case No. 09-1089-EL-POR, May 13, 2010 Opinion and Order at 20. While the Commission may place substantial weight on the terms of a stipulation, it must determine from the evidence what is just and reasonable. *In re Columbus S. Power Co.*, 2011 Ohio 2383, P19 (Ohio 2011).

In evaluating the reasonableness of a settlement agreement that is opposed by some parties, the Commission uses the following well-established criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

Columbus Southern Power Company, Case No. 09-1089-EL-POR, May 13, 2010 Opinion and Order at 21 (and cases cited therein). The well established three-part test for contested settlements has been endorsed by the Supreme Court of Ohio for use in this context. *Indus. Energy Consumer of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561 (1994), *citing Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126

(1992). The application of this case to the administrative code and Ohio revised code is found below.

IV. Issue and Argument:

The issue in this case is whether the Stipulation resolves the issues in this LTFR case and should be approved by the Commission. Based upon the appropriate process outlined in statutes, administrative code rules, and the record in this case, the answer to the question is yes. Many of the arguments offered by the Opposing Parties were stricken from testimony or objections were sustained as arguments outside the scope of the hearing. It is difficult to predict which if any of those arguments will be raised by the Opposing Parties in their respective post-hearing briefs. To the extent any arguments are raised that need a response, AEP Ohio will address them in the reply. However, the focus of this hearing should be focused on the record and stipulations finding of need.

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

The first consideration for the Commission in deciding whether to adopt a Stipulation offered by settling parties is whether the settlement is the product of serious bargaining among, knowledgeable parties. The answer based on the record is yes. First and foremost, the third paragraph of the Stipulation itself provides an agreement among the Stipulating Parties that the standard is met. AEP Exhibit 1, Prefiled Direct of William Castle at 4. Company witness Castle also testified to this component of the test. *Id.* Mr. Castle testified that the parties to the Stipulation were represented by experienced competent counsel, that the parties regularly participate in proceedings before the Commission, and that all parties in the case were invited to participate in settlement discussions. *Id.* Mr. Castle also testified that every party to the case was provided

multiple opportunities to join the agreement. *Id.* During cross-examination, Mr. Castle reiterated that he was kept apprised of the settlement discussions through email with his counsel. *Tr.* at 24-25. The Opposing Parties offered no testimony to the contrary. The only evidence in the record supports a Commission finding that the settlement is a product of serious bargaining among capable, knowledgeable parties.

B. Does the settlement, as a package, benefit ratepayers and the public interest?

The Stipulation, as a package, benefits ratepayers and the public interest. Again this prong of the three-part test is a stipulated matter by the Stipulating Parties in the third paragraph of the Stipulation. Likewise, AEP Ohio witness Castle testified concerning the public benefit of settled matters and the need for addressing “in-state renewable requirements in Ohio through investment in Ohio.” AEP Exhibit 1, Prefiled Direct of William Castle at 4. Mr. Castle added the benefits of a cleaner environment and reduced total generating plant emissions. *Id.* at 4-5.

There is a need for in-state renewable generation resources. AEP Ohio witness Castle testified that when the LTFR supplement was filed because the installed and pending base of solar generation was capable of satisfying only half of the 2012 state-wide benchmark requirement, that a viable solar renewable energy credit (“s-REC”) market would not exist without the construction and certification of additional solar generation. *Id.* at 8-10. When updating this analysis in 2012, Mr. Castle testified that the need for additional solar generation had shifted to 2015, but that it still existed. *Id.* at 10. Mr. Castle also testified that the addition of the Turning Point facility would not eliminate the need for additional in-state solar facilities, but would provide for compliance with the S.B. 221 renewable requirements. *Id.*

Staff witness Bellamy confirmed the need for additional solar generation in the State of Ohio. Mr. Bellamy testified on cross-examination that nobody knows what is going to be built, all we know is “based on what’s built right now we run out of compliance needs in just a couple of years.” Tr. at 119. When pushed on cross-examination about the Turning Point project specifically, Staff witness Bellamy stated he knew of other planned projects but that:

When you look at the need, the larger need over the next 15 years, and you look at the gap of what might be there, you know, Turning Point will help me meet that gap of, you know, of the solar obligation. So I don’t know of any project of that size that would meet that kind of need. I mean, certainly there are smaller projects that would help get towards meeting the renewable requirements, but I don’t know of any one of the size of Turning Point that would help satisfy that need.

Tr. at 137-138.

Hence, the Commission’s approval of the Stipulation is the natural conclusion to this case because it supports the elements of a LTFR filing and supports the finding of need as outlined in the testimony of the Stipulating Parties. The testimony establishes the presence of the need as reflected in the Stipulation. As supported by the testimony of those parties, the State of Ohio will be short on the necessary in-state solar RECs needed for compliance. The Stipulation in this case simply seeks Commission recognition of that fact through a finding of need as called for in the manner approved by the Commission (see administrative code provisions below). Any harm that Opposing Parties seek to attribute to a future potential surcharge is misplaced in this proceeding and can be raised when the Commission determines if it is appropriate to approve the building of the solar generation facility. That debate in no way reflects on the fact that the solar resource is needed and should be approved in accordance with the Stipulation.

C. Does the settlement package violate any important regulatory principle or practice?

The Stipulation, as a package, does not violate any important regulatory principle or practice. Again, this last prong of the three-part test is a stipulated matter by the Stipulating Parties in the third paragraph of the Stipulation. The process followed in this case follows the process established by the Commission.

The statutory basis for the determination of need in a LTFR proceeding can be found in R.C. 4935.04. R.C. 4935.04(C)(3) requires electric utilities owning generating facilities to submit a long-term forecast report to the Commission. According to R.C. 4935.04(C), the report shall contain “[a] description of major utility facilities planned to be added or taken out of service in the next ten years***.” R.C. 4935.04(C)(6) requires the report to “describe the major utility facilities that, in the judgment of such person, will be required to supply system demands during the forecast period.”

A hearing is not required every time a report is filed, but under R.C. 4935.04(D), however, if a hearing is required for good cause then the utility is required to notice that hearing in each county in which the person furnishing the report has or intends to locate a major utility facility under this part of the statute. If a hearing is held the scope of that hearing is defined under R.C. 4935.04(E). Specifically, the hearing is limited to forecast issues and R.C. 4935.04(E)(2) states:

- (2) The hearing shall include, but not be limited to, a review of:
 - (a) The projected loads and energy requirements for each year of the period;
 - (b) The estimated installed capacity and supplies to meet the projected load requirements.

This description shows first that the proceeding is not limited, and second that the estimated supplies needed to meet the projected load requirements is a proper issue for the proceeding.

The Commission is then required to make a series of findings under R.C. 4935.04(F) after the hearing. Those findings include:

- (1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented;
- (2) The load requirements are based on substantially accurate historical information and adequate methodology;
- (3) The forecasting methods consider the relationships between price and energy consumption;
- (4) The report identifies and projects reductions in energy demands due to energy conservation measures in the industrial, commercial, residential, transportation, and energy production sectors in the service area;
- (5) Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts, and make recommendations where possible for necessary and reasonable alternatives to meet forecasted electric power demand;
- (6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state;
- (7) All assumptions made in the forecast are reasonable and adequately documented.

The Commission is statutorily required to consider plans for expansion of the power grid and issue an order on all assumptions made in the forecast. R.C. 4935.04(H) discusses the usage of the record from this proceeding providing examples of the types of proceedings it will be evidence in and adding, “[t]he forecast findings also shall serve as the basis for all other energy planning and development activities of the state government where electric and gas data are required.”

A review of the administrative code rules promulgated by the Commission to oversee this process also shows the process in this case complies with regulatory principles. O.A.C. 4901:5-3-01 allows for an abbreviated report each year unless a hearing is required under R.C. 4935.04(C), in that case a full long-term forecast report is required. O.A.C. 4901:5-5-03 provides a summary of a long-term forecast report. It states in pertinent part, “[t]he long-term forecast report shall contain a summary describing the electric utility’s forecast of loads and the resource plan to meet that load***.” The rule goes on to list some minimum requirements. The relevant part of the rule for the purposes of the issues in this memorandum is the inclusion of the resource plan as a requirement of the long-term forecast report.

The resource plan required to be included as part of a LTFR is defined in O.A.C. 4901:5-5-06. Section (A)(2) of the rule states:

(A) As part of the long-term forecast report filed pursuant to rule 4901:5-3-01 of the Administrative Code, an electric utility shall include a resource plan as defined in rule 4901:5-5-01 of the Administrative Code, which shall contain a narrative discussion and analysis of the following:

(2) The availability and potential development of alternative energy resources pursuant to section 4928.64 of the Revised Code for generating electricity.

Section (A)(6)(d) requires “[t]he reporting person shall provide a ten-year forecast which shall identify the electricity resource options (including purchased power) expected to be needed to meet forecast system load levels, as identified in the peak load demand forecast, on the following forms: (i) Form FE-R4: “Actual Generating Capability Dedicated to Meet Ohio Peak Load.” The basic requirements of a long-term forecast report call for a description of alternative energy options and the resources a utility expects to utilize to meet its forecast.

O.A.C. 4901:5-5-06 gets even more specific on the requirement of the scope of the report that the Commission is considering in this proceeding. The rule requires the electric utility to file descriptions of the need for additional resource options and the procedure followed to determine that need in order to seek an allowance under section 4928.143(B)(2)(b) and (c). Specifically O.A.C. 4901:5-5-06(B)(2) states:

(B) In the long-term forecast report filed pursuant to rule 4901:5-3-01 of the Administrative Code, the following must be filed in the forecast year prior to any filing for an allowance under sections 4928.143(B)(2)(b) and (c) of the Revised Code:

(2) Need for additional electricity resource options. The reporting person shall describe the procedure followed in determining the need for additional electricity resource options.

Not only do the Commission's rules recognize a relationship between the forecasting proceedings and R.C. 4928.143, but they also explicitly require a filing based on the need for additional electricity resources. This is the process codified by the Commission.

There is also Commission precedent for approving the need for a solar facility based on resource planning projections and R.C. 4928.143(B)(2)(c) as part of the three-part test. The Commission issued a previous Opinion and Order with the same type of provisions earlier this year. In the April 19, 2011 Opinion and Order in docket number 10-505-EL-FOR, *In the Matter of the Long-Term Forecast Report of Dayton Power and Light Company and Related Matters*, the Commission approved the need for a solar

generation facility. (Finding 11) Specifically, the Commission described this portion of the agreement stating:

In addition, the Signatory Parties agree that, based on resource planning projections submitted by DP&L pursuant to the alternative energy resource requirements in Sections 4928.143(B)(2)(c), and 4929(B)(2), Revised Code, there is a need for a 1.1 MW solar generation facility, known as Yankee 1, and for additional solar generation facilities during the LTFR planning period.

The Commission also stated in the Opinion that plans to build additional solar generating facilities will be addressed in future annual LTFR proceedings. Clearly, the determination of need and incorporation of R.C. 4928.143(B)(2) was already a matter considered by the Commission in its previous decision. The Commission also addressed the appropriateness of determining need for R.C. 4928.143(B)(2) purposes in its recent decision on the AEP Ohio ESP³ stating that “*** any other surcharge authorized by Section 4928.143(b)(2), Revised Code, must be based upon a demonstration of need under the integrated resource planning process***.” (Opinion and Order at 39-40). The Turning Point project was the very example that the Commission used in this section of the order. Opposing Parties’ arguments that these matters are outside the scope of the LTFR process ignore Commission rules, precedent and control over its dockets.

The Stipulation fits squarely within the process outlined by the Commission and is an appropriate agreement for the Commission to approve. The Stipulation does not violate any regulatory practices or principles, to the contrary, the Stipulation and the

³ 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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan, 11-346-EL-SSO et. al, Opinion and Order December 14, 2011 (“AEP Ohio ESP Order”)

Commission's actions in this case are in line with the statutes and rules governing these proceedings, as well as past commission action.

V. Conclusion

The record supports approval of the Stipulation in this case. The Stipulating Parties have shown the need for solar resources in the State of Ohio. Opposing Parties only interest in the case is a prevention of a potential surcharge that will be applied, if at all, in a future case that will undergo Commission scrutiny. AEP Ohio respectfully requests the Commission approve both the unchallenged provisions of the Stipulation as filed as well as the challenged paragraph that complies with the commission's process outlined in its rules..

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Ohio Power Company's Post-Hearing Brief has been served upon the below-named counsel via traditional and electronic mail this 25th day of April, 2012.

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