

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-346-EL-SSO
Ohio Power Company for Authority to)	Case No. 11-348-EL-SSO
Establish a Standard Service Offer)	
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.)	

**MOTION TO STRIKE
SUPPLEMENTAL DIRECT TESTIMONY OF SELWYN J. DIAS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in this proceeding on behalf of residential utility customers,¹ moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to strike the Supplemental Direct Testimony of Selwyn J. Dias ("Supplemental Testimony") filed in this proceeding by Ohio Power Company ("AEP Ohio" or "Company") on April 27, 2012.² The subjects of the Supplemental Testimony – the Company's Retail Service Rider ("RSR"), the availability of interruptible service and the Company's Economic Development Cost

¹ R.C. 4911.02.

² In an Entry dated April 26, 2012, the Attorney Examiner stated (at 3): "In light of the fact that there are a significant number of parties in these proceedings and in order to ensure the evidentiary hearing proceeds in an orderly and expeditious manner, as set forth in Rule 4901-I-27(B)(7)(d), Ohio Administrative Code (O.A.C.), the attorney examiner finds that in the event any motion to strike witness testimony is made, all such motions should be made in writing and docketed. Accordingly, any motions to strike AEP-Ohio witness testimony shall be filed by May 4, 2012, and any memorandum contra should be filed by May 9, 2012."

Recovery Rider (“EDR”) – were addressed in testimony the Company filed with its Application in this proceeding on March 30, 2012. The information provided by Mr. Dias could have been included in the testimony filed on March 30, 2012, and thus is inappropriate as supplemental testimony, given the fact that the Supplemental Testimony was filed only seven days before intervenor testimony is due and no discovery on Mr. Dias’s testimony could be done before intervenors file their testimony. These factors unduly prejudice intervenors in this case, and the Commission should thus strike the Supplemental Testimony.

There is good cause for granting OCC’s motion, as explained in the following memorandum.

Respectfully submitted,

BRUCE J. WESTON
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/s/ Terry L. Etter

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 29, 2012, AEP Ohio filed its modified Electric Security Plan (“Modified ESP”). Concurrently, the Company filed the testimony of 12 witnesses supporting the Modified ESP. At least four Company witnesses addressed the RSR,³ and Company witness Roush addressed interruptible service,⁴ while witness Dias discussed the EDR.⁵

On April 2, 2012, the Attorney Examiner issued an Entry establishing a procedural schedule for this proceeding. Among other things, the Entry set April 27, 2012 as the deadline for filing testimony on behalf of the Company; May 4, 2012 as the

³ Direct Testimony of William A. Allen at 13-15; Direct Testimony of David M. Roush at 12-13 and Exhibit DMR-3; Direct Testimony of Robert P. Powers at 18-19; Direct Testimony of Selwyn J. Dias at 12.

⁴ Roush Testimony at 8-10.

⁵ Dias Direct Testimony at 13.

deadline for PUCO Staff and intervenor testimony, as well as the date for discovery cutoff; and May 14, 2012 for the beginning of the hearing.⁶

On April 4, 2012, AEP Ohio filed a motion to amend the procedural schedule. Among other things, the Company argued that the schedule set forth in the Entry did not allow the Company time for discovery of PUCO Staff and intervenor testimony.⁷ AEP Ohio proposed to keep the discovery cutoff and hearing dates, but to move the deadline for filing its testimony to April 23, 2012 and the deadline for PUCO Staff and intervenor testimony to May 1, 2012.⁸ In the alternative, the Company asked that the date for discovery cutoff be moved to May 7, 2012.⁹

On April 5, 2012, OCC, FirstEnergy Solutions Corp., Industrial Energy Users-Ohio and the Appalachian Peace and Justice Network (collectively, “Opposing Parties”) filed a joint memorandum contra AEP Ohio’s motion. Regarding the procedural schedule, the Opposing Parties noted that the Company’s proposed schedule would give them less time to prepare testimony than the schedule established in the Entry.¹⁰ Instead, the Opposing Parties sought additional time for discovery and filing testimony. The Opposing Parties proposed the following schedule: Company testimony due on April 27, 2012; discovery cutoff on May 25, 2012; PUCO Staff and intervenor testimony due on June 1, 2012; and the hearing commence on June 13, 2012.¹¹

⁶ April 2 Entry at 2.

⁷ See AEP Ohio Motion for Amendment of the Procedural Schedule (April 4, 2012) at 6-7.

⁸ See *id.* at 7-8.

⁹ See *id.* at 8-9.

¹⁰ Joint Memorandum Contra (April 5, 2012) at 2.

¹¹ *Id.* at 3-4. On April 9, 2012, Ormet Primary Aluminum Corp. also filed a memorandum contra AEP’s motion, asking the Commission to deny the motion “to the extent it seeks to shorten the time allotted for the intervenors’ preparation of testimony.” Ormet Memorandum Contra (April 9, 2012) at 5.

On April 11, 2012, the Attorney Examiner issued an Entry denying AEP Ohio's request to shorten the amount of time for PUCO Staff and intervenors to prepare their testimony.¹² Although referencing the Parties' proposed alternative schedule, the Attorney Examiner did not make the changes the Opposing Parties recommended. Instead, the Attorney Examiner kept the filing dates for testimony and the hearing intact. The only change was to the discovery cutoff date, from May 4 to May 7, 2012.¹³

Although AEP Ohio had earlier stated that "it does not expect a need to file supplemental testimony,"¹⁴ the Company nevertheless filed the Supplemental Testimony on April 27, 2012. In the Supplemental Testimony, Mr. Dias addressed the RSR, the availability of interruptible service and the EDR, all of which were addressed in testimony filed with the Application. Because the information in the Supplemental Testimony could have been, and indeed should have been, filed with the Application, OCC moves the Commission to strike the Supplemental Testimony.

II. ARGUMENT

The Supplemental Testimony addresses four primary areas: (1) how the RSR allegedly promotes state policies¹⁵; (2) the supposed benefits of the RSR¹⁶; and (3) the

¹² Entry (April 11, 2012) at 3.

¹³ Id. at 4. On May 3, 2012, the Attorney Examiner issued an Entry which (at 2) *sua sponte* changed the deadline for PUCO Staff testimony to May 9, 2012, extended the discovery deadline to May 14, 2012 and changed the start of the hearing to May 17, 2012, with a call and continuance on May 14, 2012, among other things.

¹⁴ AEP Ohio Motion for Amendment at 7.

¹⁵ Supplemental Testimony at 2-3.

¹⁶ Id. at 3-7.

continued availability of interruptible service¹⁷; and (4) the EDR.¹⁸ AEP Ohio makes no claim that the information contained in the Supplemental Testimony was not available when the Application was filed or that it represents a change in the Company's position regarding the Application. Instead, Mr. Dias states that the purpose of the Supplemental testimony is to "provide additional detail" regarding how the RSR allows the Company to meet a number of State policy objectives "while protecting the financial integrity of the Company" during the transition to market-based Standard Service Offer ("SSO") pricing.¹⁹ This information, however, could have been filed with the Application, and its submission only one week before the deadline for intervenor testimony unduly prejudices intervenors in this proceeding.

The Commission's rules require that an application for an SSO containing a proposal for an ESP must include "[a] complete description of the ESP and testimony explaining and supporting each aspect of the ESP."²⁰ In addition, "[t]he **initial** filing for an ESP shall include a **detailed account** of how the ESP is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include how the state policy is advanced by the ESP."²¹ The references to "initial" and "subsequent" filings are unclear. But because this rule refers to ESP applications, a fair reading is that "initial filing" means a company's first application for an ESP under the law and "subsequent

¹⁷ Id. at 7-8.

¹⁸ Id. at 8.

¹⁹ Id. at 1.

²⁰ Ohio Adm. Code 4901:1-35-03(C)(1).

²¹ Ohio Adm. Code 4901:1-35-03(C)(8) (emphasis added).

filings” means subsequent ESP applications and not other filings dealing with the same application. Nevertheless, the Company had a clear opportunity to file the information contained in the Supplemental Testimony with the March 30 Application instead of waiting nearly a month – and seven days before the deadline for intervenor testimony – to do so in a case with a very short time line.

Intervenors are unable to have effective discovery on the information in the Supplemental Testimony, which should have been included in the testimony filed on March 30, 2012. The Attorney Examiner has ordered a ten-day time for responding to discovery.²² Thus, even if intervenors could have served discovery regarding the Supplemental Testimony on the day it was filed, the Company is not obligated to respond to such discovery until after the deadline for filing intervenor testimony. This unduly prejudices the intervenors in this proceeding. The Commission should thus strike the Supplemental Testimony.

OCC also urges the Attorney Examiner to address this Motion before the hearing begins, so that intervenors will know well in advance of the hearing whether to prepare cross-examination regarding the Supplemental Testimony. OCC asks that this Motion be addressed at the prehearing conference scheduled for May 7, 2012.

III. CONCLUSION

The Supplemental Testimony contains no information that the Company could not have filed with its Application on March 30, 2012, as required by Ohio Adm. Code 4901:1-35-03(C)(8). By filing the Supplemental Testimony seven days before intervenor

²² April 2 Entry at 3.

testimony is due, the Company has effectively precluded discovery on the Supplemental Testimony before intervenors file their testimony. This unduly prejudices intervenors, and thus the Commission should strike the Supplemental Testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was served by electronic mail to the persons listed below, on this 4th day of May 2012.

/s/ Terry L. Etter

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Summary: Motion Motion to Strike Supplemental Direct Testimony of Selwyn J. Dias by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.