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 Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	:	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company And Ohio Power Company for Approval of Certain Accounting Authority.	:	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM

POST-HEARING BRIEF ON BEHALF OF NFIB/OHIO AND COSE

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June 29, 2012

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I. INTRODUCTION

On March 30, 2012, AEP/Ohio filed an Application for a Standard Service Offer pursuant to R.C. 4928.141. AEP-Ohio's Application is for a modified electric security plan ("ESP") in accordance with R.C. 4928.143. AEP-Ohio is seeking the Commission's approval of an ESP based upon R.C. 4928.143 and O.A.C. 4901:1-35, for a term commencing on June 1, 2012 through and including May 31, 2015. (See, generally, AEP-Ohio Ex. 100).

The Ohio Chapter of the National Federation of Independent Businesses ("NFIB/Ohio") represents over 24,000 small-business owners and energy consumers of varying size and industry class in Ohio, with a typical small-business member employing 25 or fewer, and having gross annual revenue of less than $1,000,000. NFIB/Ohio represents independent businesses on public policy and other issues important to its members. This proceeding represents a matter of great importance to NFIB/Ohio's members who have a real and substantial interest in AEP-Ohio's proposed ESP with respect to issues that center on competition in the marketplace and resulting costs to NFIB/Ohio's members from the rates to be established by the Commission through this proceeding which impact them on a daily basis. NFIB/Ohio has long championed the position that fostering competitive markets and limiting government intervention will free entrepreneurs to create jobs, make capital investments, and take risks that help grow their businesses.

The Council of Smaller Enterprises ("COSE"), one of Ohio's largest small business support organizations, strives to help small businesses grow and maintain their independence. Comprised of more than 15,000 member companies, COSE has a long history of fighting for the rights of all small business owners, whether it's through group purchasing programs in healthcare, workers' compensation, electricity, payroll services, shipping, or advocating for specific changes in legislation or regulation. COSE also produces more than 100 networking and business education events each year - all focused on connecting our members to each other to increase their ability to succeed.

COSE, a certified Competitive Retail Electric Service Provider, started a group electric aggregation program for its members in 1999. Since that time, COSE has enrolled more than 6,300 electric accounts, which provide annual electricity cost savings to participating COSE members and their employees. During the term of AEP-Ohio's proposed ESP, COSE will launch the COSE Energy Choice Program to offer small business owners a choice of electric utility providers on a statewide basis.

In a world where small businesses survive on razor-thin margins, and do so without any guarantee of profitability, AEP-Ohio seeks the certainty of an annual double-digit ROE during the transition period to an open, competitive marketplace. No small business in this state operates under such financial security or certainty. Instead, each business owner must become more efficient and discover innovations to become more profitable. Allowing AEP-Ohio to lean on the crutch of financial certainty of a double-digit guaranteed ROE discourages that same innovation and those same efficiencies on the part of AEP-Ohio. Should the Commission deem an increase in electric service rates necessary, NFIB/Ohio and COSE ask that such increase be spread equally among all users, whether residential, commercial, or industrial. Small-business owners cannot be the sole group asked to bear the brunt and burden of any rate increase without suffering the corresponding serious and detrimental effects upon job creation and retention within the AEP-Ohio service territory. Small-business creates roughly two out of every three jobs in this State and it is unrealistic to expect recovery from the economic downturn of the past few years if small-business owners continue to see the costs of doing business rise disproportionately to their larger counterparts.

NFIB/Ohio's and COSE's participation in this proceeding, and NFIB/Ohio's in the pending Capacity Charge proceeding in Case No. 10-2929-EL-UNC, emphasize the importance of the Commission's decision to Ohio's job creators and every individual that they employ. This is why NFIB/Ohio and COSE are asking that the Commission allow free market forces to work, and ensure that AEP-Ohio's rates be set at a competitive level in the electric service market for small commercial users and business owners.

II. ARGUMENT

A. The Retail Stability Rider Will Cause Increases in Customer Rates While Artificially and Unnecessarily Protecting AEP-Ohio's Revenues.

The proposed modified ESP includes the establishment of a nonbypassable Retail Stability Rider ("RSR") which is intended "to provide stability and certainty to both customers and the Company. [T]he RSR is a generation revenue decoupling charge that would be paid by shopping and non-shopping customers during the period prior to June 2015, when the Company will no longer be providing capacity to serve its entire connected load as an FRR entity." (AEP-Ohio Ex. 110, p.10). AEP-Ohio claims that it "would be in a precarious financial position during the ESP term without the RSR." (Id.)

This "precarious financial position" AEP-Ohio will find itself in without the RSR supposedly results from the package of terms and conditions in the proposed ESP, including highly discounted capacity pricing to support shopping load. According to AEP witness Allen (AEP-Ohio Ex. No. 116), the RSR will replace a portion of lost revenue occasioned through the company's providing highly discounted capacity pricing to CRES providers intending to serve increasing percentages of the company's load to encourage shopping. (Id. at p.13, l.7-15)

As proposed, the RSR will provide AEP-Ohio a mechanism by which it will realize total, stable, and certain non-fuel generation revenues in the amount of $929,000,000.00 annually during planning years 2012 through 2015. These non-fuel generation revenues include CRES capacity revenues, auction capacity revenues, and credit for shopping load. (See Exhibit WAA-6, appended to AEP-Ohio Exhibit No. 116.) In each of the referenced years, the RSR would provide incremental revenues to AEP-

Ohio in the amount of $44.1 million, $102.9 million, and $137.2 million, respectively, or $284.1 million in the aggregate during the life of the modified ESP. As stated by AEP witness Allen in his rebuttal testimony (AEP-Ohio Exhibit No. 151): "The RSR is designed to provide a stable level of non-fuel generation revenues that would have allowed AEP-Ohio to earn a 10.5% ROE in 2011[]" and provides AEP-Ohio a stable level of non-fuel generation revenues during the term of the ESP, not a stable ROE. (Id., p.3 at l.15-16)

To be clear: the **"certainty"** resulting from the adoption of the RSR would be an increase in customer rates across all customer classes in the AEP service territory, while the **"stability"** touted by AEP-Ohio resulting from the RSR is its revenue stream throughout the ESP. The RSR, standing alone or as part of the "package" offered by AEP-Ohio in its proposed ESP, does not foster, promote or align with the "state policies" set forth in R.C. 4928.02.

The RSR will provide AEP-Ohio a steady and consistent stream of non-fuel generation revenues under the guise of avoiding "serious financial harm," even though AEP-Ohio has not established harm of such magnitude will occur in the absence of the RSR. What was established during the hearing is that AEP-Ohio's **total revenues** have **increased year over year between 2009 and 2011 from $4.8B to $5.4B**, while during the same time period, its operating income decreased from $1.1B to $834M because its expenses increased. (NFIB/Ohio Ex. 105) For example, AEP-Ohio's expense for purchased electricity from AEP affiliates has risen from $288M to $515M; purchased electricity for resale has increased; and all other reported expense categories have increased per its Consolidated Statements of Income. (Id.)

To guarantee a revenue stream under circumstances where total revenues increase year over year, while expenses continue to rise defies logic: the RSR provides little or no incentive to control expenses; and to the extent expenses are reduced or controlled, guaranteeing revenues will mask problems on the expense side of the income statement/operations, or, will provide a fortuitous windfall should expenses be cut. Moreover, during the past 3 years, AEP-Ohio has generated sufficient revenues to pay dividends on its common stock to its parent, American Electric Power, Inc., in the amount of $245,000,000.00 (2009), $469,075,000.00 (2010), and $650,000,000.00 (2011); and, has paid dividends in 2009, 2010, and 2011 on its cumulative preferred stock (Id.). AEP-Ohio also recently paid a 2012 first quarter dividend of $75,000,000.00 to its parent. (Renee Hawkins, Tr. Vol. II, p.468)

During the same 3-year period, AEP-Ohio has had sufficient cash and liquidity to retire long-term debt from nonaffiliated entities: $295,500,000.00 (2009); $868,580,000.00 (2010); and $165,000,000.00 (2011), while retiring $18,000,000.00 in cumulative preferred stock. Thus, AEP-Ohio's balance sheet, cash position and liquidity, even without the benefit of the RSR during a period of increased shopping load and decreased non-fuel generation revenues, has not impeded its ability to upstream dividends to its parent, retire long term debt from affiliated or nonaffiliated entities and retire other affiliated obligations.

Yet still another troublesome aspect of the RSR is the simple fact that non-fuel generation revenues of AEP-Ohio have decreased due to factors entirely unrelated to the very factors AEP-Ohio claims are the bases upon which the RSR is predicated: discounted capacity pricing, credit for shopping load and auction pricing. For instance, during the first quarter of 2012, generation revenues decreased due, in part, to decreased customer demand, as compared with the same period last year primarily because of record warm temperatures. (Robert Powers, Tr. Vol. I, p.314, l.11-17). Mr. Powers confirmed that there are factors that affect revenue from generation that make such revenues somewhat unpredictable. (Id., p.315, l.17-22). Thus, nowhere in the record of this proceeding has AEP-Ohio established a causal connection or relationship between the articulated basis and amount for the RSR and the actual operating revenues generated by AEP-Ohio.

The RSR will guarantee a stable and certain revenue stream to AEP-Ohio through the term of the modified ESP and will serve to supplement decreasing revenues, but this decrease may be entirely due to factors wholly unrelated to the claimed purposes for which the RSR is designed. The RSR will protect AEP-Ohio while increasing customer rates. As confirmed by AEP witness Roush, as designed and proposed, the certainty of the RSR and ESP will be: (1) a rate increase experienced by customers if the modified ESP is approved by the Commission (Tr. Vol. IV, p.1147, l.4); (2) the RSR is a charge that doesn't exist currently, so that would be an increase (Id.); (3) the actual rate values of the RSR could change during the term of the ESP (Id., p.1151); (4) rate fluctuations during the period of the ESP since customers' total bills aren't fixed (Id., l.12-14); and, (5) this would be experienced by all class of customers in both rate zones were the RSR implemented as proposed (Id., l.15-17). These outcomes are neither consistent with state policies articulated in R.C. 4928.02, nor desirable from the perspective of any class of customer within the AEP-Ohio service territory.

B. The Distribution Investment Rider Will Also Increase Customer Rates While Artificially and Unnecessarily Protecting AEP-Ohio.

The modified ESP includes establishing a Distribution Investment Rider ("DIR"), the purpose of which is to provide capital funding for distribution assets to support distribution asset management programs, distribution capacity, and infrastructure additions. (AEP-Ohio Ex. 100, p.12). AEP-Ohio witness Thomas Kirkpatrick, Vice President of Distribution Operations testified, in part, that the DIR is to provide capital funding for distribution assets detailed in the FERC Chart of Accounts. (AEP-Ohio Ex. 110, p.11, l.10-11). Although he is the individual responsible for overseeing the planning, construction, operation, and maintenance of the distribution system of AEP-Ohio (Id., p. 2, l.6-7), Mr. Kirkpatrick did not provide any input in arriving at the caps proposed for the DIR in the modified ESP, does not know how the numbers were arrived at for the DIR, and is unaware of how the amounts of the proposed cap were arrived at for purposes of this proceeding. (Tr. Vol. IV, p.1040-1041).

AEP-Ohio witness Roush testified that he would view a portion of the DIR as an increase, the other portion of it is the amount that was already credited against the authorized increase in the distribution cases. (Id., p.1147, l.4-11). To this extent, Mr. Roush acknowledged that the DIR would form part of the rate increase to be experienced by customers as a result of the approval of the modified ESP. (Id) While the DIR is not a fixed annual cost during the term of the ESP, the actual rate values of the DIR could change during the duration of the ESP. (Id., p.1149-1151). Specifically as it relates to small business customers within both rate zones, in the context of NFIB/Ohio Exhibits 102, 103, and 104, Mr. Roush testified as to the increased monthly charges to be experienced by such customers as a result of the implementation of the DIR as part of the modified ESP.

Beginning at Tr. Vol. IV, p.1162, Mr. Roush explained by utilizing Exhibit DMR-5 (p. 236 of 238) the impact of the DIR in the Ohio Power rate zone. He testified that the DIR would impose for each of the small-business customers reflected by NFIB/Ohio Ex. 102, 103 and 104, an adjustment that is "14.20709% of the customers' distribution charges under the company's Schedules, excluding charges under any applicable riders." Per DMR-5, a GS-1 customer using 1,000 kilowatt-hours would have a distribution bill of $13.17 plus 1000 x .0027999, or $13.17 plus $2.80, or a total of $15.97. Then you would take that $15.97 times the 14% and change from the rider to calculate an additional rider charge (the DIR) of "roughly two bucks." (Id., p.1163, l.9-16). This additional charge caused by the DIR would continue on a monthly basis at the rate of 14.2+ percent of the customer's distribution charges throughout the duration of the modified ESP.

Thus, much like the RSR, the DIR will increase customer rates while artificially and unnecessarily protecting AEP-Ohio's income stream. In responding to FirstEnergy Solutions Corporation Discovery Request FES-INT-5-05(c), the Company confirmed that the DIR produced the following revenue during the term of the modified ESP- 2012: $67.8M; 2013: $104.6M; 2014: $124.0M; and, 2015: $651.2M. (Ormet Ex. 101). To the extent this revenue is an "upcharge" caused by the DIR, over and above that which has already been approved in the distribution rate case, the amount should be rejected by this Commission as part of any ESP adopted in this proceeding.

C. "Red Herrings" Offered by AEP-Ohio to Support its Modified ESP Application.

1. Adverse Reaction of Rating Agencies

The spectre of financial harm and job loss are among the "parade of horribles" offered by AEP-Ohio to support its proposed modified ESP. Perhaps the best examples of such "red herrings" are the credit agency reports and exhibits attached to the testimony of AEP-Ohio witness Rene Hawkins (AEP-Ohio Ex. 102). Ms. Hawkins testified that the purpose of including the rating agency reports in the testimony "was to identify the fact that we need stability as we look at this, we need financial stability over the next three years, and that the rating agencies reacted very strongly when they, you know, when the order [proposed stipulation] was rejected." (Tr. Vol. II, p.74, l.13-17). Ms Hawkins explained that this reaction was two-pronged; the first was the uncertainty of the unknown rate to be captured through the modified ESP and secondly, the uncertainty of the cash flow to AEP-Ohio caused by the fact that there was no definite rates set going out into the future for a defined term. (Id., p.475, l.7-10). Again, uncertainty, as used by Ms. Hawkins, relates to the unknown rate and the unknown outcome of this proceeding. (Id., p.476, l.11-13). The ultimate end of this proceeding will alleviate uncertainty both as to outcome and as to rate and, naturally, depending upon the level of financial subsidy accorded AEP-Ohio by this Commission, each rating agency will then react.

However, with one minor exception, the rating agencies since the time of the rejection of the proposed Stipulation have affirmed their ratings outlook of stable and unchanged for both AEP-Ohio, the operating company, as well as American Electric Power, Inc. (Id., p.478). Similarly, Ms. Hawkins confirmed as to another potential problem area for the Company, i.e., short-term borrowings, that AEP-Ohio has available to it a $600 million pool of money from which it is able to pay short-term debt through inter-company notes. (Id., p.473). Moreover, Ms. Hawkins confirmed that over the last 2+ years AEP has had access to the debt markets (Id., p. 480, l. 23), and that she is unaware of any current studies, analyses, or projections that suggest that AEP-Ohio would be unable to access the debt markets on a going-forward basis. (Id., p.481, l.12-13). Similarly, the liquidity position which Ms. Hawkins questioned in her prefiled testimony is simply belied by the fact that in December, 2011, AEP-Ohio redeemed $16.6 Million of Preferred Stock without harming the capital position of the Company. (Id., p.479, l.22).

2. <u>Forecasts of Serious Financial Harm</u>

So too, the testimony of AEP witness Oliver Sever, Managing Director of Financial Forecasting, and employed by American Electric Power Service Corporation, does not support the proposition that AEP-Ohio will suffer serious financial harm if the modified ESP is not adopted as proposed. (AEP-Ohio Ex. 108). Mr. Sever presented the Company's pro forma financial statements for the period of the ESP and described the forecast methodology and overview of the major assumptions used to develop that forecast. Mr. Sever projected that for each year 2012 through 2015 there will be an increase in the ending cash and cash equivalents as a result of cash flow and operations for AEP-Ohio. (Tr. Vol. II, p.952, l.15-18). From that cash position, Mr. Sever's projections (Ex. OJS-2 to AEP-Ohio Ex. No. 108) reflects dividends paid by AEP-Ohio to its parent in the annual amount of $300M, in both 2012 and 2013 (Id., p.951-52), and that after separation, the dividend continues in the amount of $175M annually for the wires-only company. (Id.) Thus, the financial health and well-being of AEP-Ohio is certainly not in question during the period of the modified ESP term per Mr. Sever's forecasts.

3. The $600M Problem

Yet another portend of doom was presented during the testimony of Mr. Powers who described "the greater than $600 Million a year problem from a revenue standpoint" if the modified ESP were not approved by the Commission. (Tr. Vol. I, p.308, l.2-9). The "$600 Million problem" relates to the potential loss of 6,000 jobs, based upon a $100,000 per employee cost to AEP-Ohio. However, when asked whether, and if, the modified ESP were approved by the Commission, there would be an increase in the "spend" by AEP-Ohio in the State of Ohio, or an increase in the number of employees throughout the term of the modified ESP, Mr. Powers was unable (and unwilling) to affirmatively state whether there would be a maintenance of or increase in jobs by AEP in the State of Ohio, or whether the "spend" would be maintained or increased. (Id., p.308-310).

Notwithstanding Mr. Powers' reluctance to confirm or deny that the spend and employment level of AEP-Ohio would increase or remain the same were the modified ESP be approved by the Commission, and even though he is one of the five-highest paid Executive Officers of American Electric Power, Inc., and a Member of the Board of Directors of AEP-Ohio (see AEP, Inc. 2012 Proxy Statement), Mr. Powers never once suggested diminishing or decreasing the upstream dividend paid to AEP-Ohio's parent, or decreasing in any way the compensation paid to the Executive Officers of either the parent or the operating subsidiary to address or help offset this "$600M problem."

Selwyn Dias, Vice President, Regulatory and Finance of AEP-Ohio, and the highest ranking AEP-Ohio employee to testify during these proceedings, also touched upon the notion that "if severe financial harm is caused to AEP[-Ohio], the company would have to re-look at its investment and related jobs." (Tr. Vol. VI, p.2045, l.17-20) Mr. Dias conceded, however, that American Electric Power, Inc. was already in the process of eliminating nearly 2,500 positions across the AEP system as a result of process improvements, streamlined organizational designs, and other efficiencies. (Id., p.2046-2047, l.24) While acknowledging such position eliminations were ongoing in the AEP system, Mr. Dias was uncertain as to how that has affected employment at the AEP-Ohio company level. (Id.) Nonetheless, the notion that job losses will result were the Commission unwilling to adopt the proposed modified ESP is truly a "red herring" when currently across the AEP system there has been ongoing reduction in the number of employees since May 31, 2010. (See, generally, AEP 2011 Annual Report, Appendix A to the Proxy Statement. P.145, Item 16-Cost Reduction Initiatives).

4. Discounted Capacity Charges

Finally, the proposed modified ESP relies in large measure upon the continuation of discounted capacity charge to CRES providers as justification for the RSR and the overall package of terms and conditions proposed by AEP-Ohio. Interestingly, Mr. Dias agreed during cross-examination that: competitive markets do provide some benefits to customers; one of the benefits of the proposed ESP is the potential for diversity of suppliers; there will be a range of CRES suppliers and that will be more choices for customers; one of the things that customers might get to have a choice about if the price they might pay for generation service; discounted capacity proposed in the ESP will allow for a diversity of suppliers that will translate to robust choices for customers; robust choices for customers will lead to robust competition; and from robust competition one would normally expect lower prices than if there was little or no competition. (Tr. Vol.

VI, p.1945-1947).

Striking a similar note in favor of competition resulting from continued discounted capacity charges to CRES providers, Mr. Allen testified: "to the extent that capacity is provided at a discount below the company's costs of $355, every dollar reduction in that rate that's provided to CRES providers provides additional benefits to customers." (Tr. Vol. V, p.1561-1562, l.22-1) Mr. Allen's parallel testimony to that of Mr. Dias augurs in favor of this Commission's approval of continued "discounted capacity charges" to CRES providers as an integral component during the remainder of the modified ESP.

III. CONCLUSION

NFIB/Ohio's and COSE's intervention in this proceeding are extraordinary for their organizations and their members. That they have chosen to intervene here underscores and highlights the importance of the ultimate decision to be rendered by the Commission in this proceeding. This is precisely why NFIB/Ohio and COSE urge the Commission to carefully consider each aspect of AEP-Ohio's proposed modified ESP. The impact that the rate increases will have upon small-business owners is very real. These rate increases cannot and should not be dismissed as either minimal or inconsequential to a class of customers that has shouldered a disproportionate burden of the rate shock occasioned by the recently concluded distribution rate case.

For all the foregoing reasons, as well as those contained in the record of these proceedings, NFIB/Ohio and COSE urge the Commission to reject the proposed Retail Stability Rider, the proposed Distribution Investment Rider, and to modify such other aspects of the proposed modified ESP that are anti-competitive devices designed to benefit AEP-Ohio at the expense of NFIB/Ohio's and COSE's members within the AEP-Ohio service territory.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **POST-HEARING BRIEF ON BEHALF OF NFIB/OHIO AND COSE** was served by electronic mail, this 29th day of June, 2012, upon the following:

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