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

REPLY BRIEF OF NFIB/OHIO

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I. INTRODUCTION

As expected, AEP-Ohio's Initial Post-Hearing Brief ("Brief") extols the balanced package presented by its Modified ESP, while characterizing its terms and conditions as reasonable, lawful and advancing state energy policies. (Brief, p.25, *in passim*) However, The Ohio Chapter of the National Federation of Independent Businesses ("NFIB/Ohio"), which represents over 24,000 small-business owners and energy consumers of varying size and industry class in Ohio, believes the Modified ESP as proposed by AEP-Ohio is properly characterized by its overall rate increases that will adversely impact and affect NFIB/Ohio's members.

NFIB/Ohio urges 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 members within the AEP-Ohio service territory. NFIB/Ohio's members have a real and substantial interest in 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. NFIB/Ohio has long championed the position that fostering competitive markets and limiting government intervention will serve to create jobs, increase capital investments, and allow its members to take risks that help grow their businesses.

Small businesses survive on razor-thin margins. They do so without any guarantee of profitability. By contrast, through its Modified ESP, AEP-Ohio seeks the certainty of an annual double-digit ROE during the transition period to an open, competitive electric 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.

Should, however, the Commission deem an increase in electric service rates necessary, any such increase should be spread equally among all classes of customers, whether residential, commercial, or industrial. Small-business owners cannot continue to be the only class of customers that is asked to bear the brunt and burden of any rate increase. Small-business creates roughly two out of every three jobs in this State and it is unrealistic to expect them to recover from this economic downturn and return to a sustainable level of productivity if they continue to see energy, and other costs of doing business rise indiscriminately and disproportionately to their larger counterparts.

II. ARGUMENT

A. NFIB/Ohio Does Not Support the Rate Increases Proposed by the Modified ESP.

As set forth more fully in NFIB/Ohio's previously-filed Post-Hearing Brief, it is clear that were the Commission to adopt the modified ESP as proposed by AEP-Ohio, customers across all classes and industries will experience a rate increase. AEP-Ohio characterizes this result to be nothing more than a "modest average rate increase" (AEP-Ohio Initial Brief, p.1,1.14) which AEP-Ohio claims to advance the state policy of R.C. 4928.02(A) to insure the availability to consumers of "reasonably priced retail electric service." (Id.) AEP-Ohio goes on to say that its customers understand that such "modest increases do not mean a price is not reasonable." (Id.)

To support this belief, AEP-Ohio's Brief offers a snippet from the cross-examination of NFIB/Ohio Executive Director Roger R. Geiger (Tr. Vol. VIII, p.2376, l.2-3). When asked whether he knew the average percent increase experienced by those NFIB/Ohio members that reached out to him in December 2011 and January 2012, Mr. Geiger responded that while he did not, he added that had those increases been "modest" NFIB/Ohio would not have had heard the hue and cry that it did at the time. (Id., l.2) He went on to say that "everybody recognizes that there are modest increases in everybody's pricing." (Id.) This acknowledgment does not, however, signify support for or agreement with the proposed rate increases, nor does it fairly capture Mr. Geiger's testimony on this subject.

As Mr. Geiger went on to explain during his testimony at the Hearing: "at the end of the day it's the bottom line of my members' bill that matters." (Tr. Vol. VIII, p.2381, l.2-3) When asked if he understood that modest increases and costs will occur, he responded "they could" and added: "I will also point out that many small business owners simply aren't increasing any prices right now under the current environment, but yes." (Id., p.2382, l.9-12) However, **when asked whether he would expect a 3% [rate] increase to be significant [in the context of the modified ESP], Mr. Geiger responded that "in today's environment, yes. As I said, many small business owners have taken price cuts, have done all kinds of cutting and simply aren't raising prices." (Id., p.2382, l. 23-25)**

Finally, Mr. Geiger was asked whether he believed that, in his opinion, somewhere around a 2 to 3% rate increase would be a modest increase? (Id., l.17-19), Mr. Geiger responded "is it modest? Yes. Is it sustainable? Is it what ought to be happening in the market place? That's a different question." (p.2383, l.20-22) Finally, when asked if NFIB/Ohio members see cost increases of 2-3% in any of their other input products or commodities they purchase, Mr. Geiger responded (p. 2383, l.1-5):

> . . . **they see it all the time. Guess what, they don't get to just pass it on. They don't have a government entity that gets to guarantee them anything. So yes, they see it but they don't just get to pass it on.**

At the end of the day, Mr. Geiger's testimony does not stand for NFIB/Ohio's support of the rate increase proposed in the modified ESP, and does not stand for or support the proposition that the modified ESP represents "reasonably priced retail electric service" under R.C. 4928.02(A). Simply stated, NFIB/Ohio does not support the rate increases contained in the Modified ESP.

B. The Modified ESP Does Not Satisfy R.C. 4928.02(M).

AEP-Ohio's Brief also suggests that the proposed Modified ESP satisfies R.C. 4928.02(M) by encouraging the education of small business owners in this state regarding the use of, and encourages the use of, energy efficiency programs and alternative energy resources in their businesses. (Brief, p.123) In support of that statement, AEP-Ohio suggests that the "modest overall rate increases" and the "rate design considerations of the modified ESP protect small business owners in the state." (Id.)

Such unsupported, conclusory statements lack reference to the record, other than Mr. Geiger's earlier-referenced testimony that "everybody recognizes that there are modest increases in everybody's pricing." Even when taken out of context, this still does not stand as support for the state policy of R.C. 4928.02(N), but instead, demonstrates the abject failure of AEP-Ohio to carry its burden of proof on this issue with any relevant evidence.

C. The RSR Will Increase Customer Rates While Artificially and Unnecessarily Enhancing AEP-Ohio's Financial Position.

As it has done throughout this proceeding, AEP-Ohio's Brief claims that "the Company would be in a precarious financial position during the ESP term without the RSR. This would cause the Company to implement significant cost controls and could trigger negative job impacts in Ohio." (Brief, p.34) Reinforcing "the potential dire consequences of any Commission failure to address the adverse financial impact associated with its decisions," AEP-Ohio points to the rebuttal testimony of Dr. Avera as evidence that failing to adopt the RSR as part of the ESP package "could conceivably push AEP Ohio to the financial brink." (Id., p.43) Whether they are predictions or threats, these hyperbolic, futuristic financial forecasts are contradicted by the evidentiary record.

For example, AEP-Ohio witness Oliver Sever, Managing Director of Financial

Forecasting, 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) 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.

The evidence adduced during the Hearing also established 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 the Company to engage in "significant cost controls" as an outcome of this proceeding would seem appropriate, rather than a punitive or draconian result. 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 have increased year over year, while expenses have continued 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 serve to mask problems on the expense side of the income statement and 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), respectively; 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. (NFIB/Ohio Ex. 105) 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.

The RSR is not reasonable due to the simple fact that non-fuel generation revenues of AEP-Ohio have decreased, in part, because of factors entirely unrelated to the very factors AEP-Ohio claims the RSR is predicated upon: discounted capacity pricing, credit for shopping load and auction pricing. 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). While the RSR will certainly guarantee a stable and certain revenue stream to AEP-Ohio through the term of the modified ESP and will serve to supplement decreasing revenues, this decrease may be wholly unrelated to the claimed purposes for which the RSR is designed. The RSR will protect AEP-Ohio while at the same time, it will increase customer rates.

As designed and proposed, the collective **certainty** of the RSR and Modified ESP, if approved as proposed, will be: (1) a rate increase experienced by customers (Roush, 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) all of the foregoing would be experienced by all classes of customers in both the OP and CSP rate zones (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.

III. CONCLUSION

Aggressively priced rates ensure lower prices for customers and guarantee that AEP-Ohio will shift to a truly open and competitive marketplace. Business, no matter how big or small, must adapt its operation to the market, not the other way around. (NFIB/Ohio Ex. No. 101, p.8, l.8-12). NFIB/Ohio urges the Commission to carefully scrutinize each aspect of AEP-Ohio's proposed modified ESP because the impact that any rate increase will have upon small-business owners is very real. These rate increases cannot and should not be dismissed perfunctorily as either "modest" or inconsequential, because they are not to small-business owners--- a class of AEP-Ohio customers that has been forced to shoulder a disproportionate burden of the rate shock occasioned by the recently concluded distribution rate case.

For all the foregoing reasons, NFIB/Ohio urges this 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 designed to benefit AEP-Ohio at the expense of NFIB/Ohio'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 **REPLY BRIEF OF NFIB/OHIO** was served by electronic mail, this 9th day of July, 2012, upon the following:

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