

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 Pursuant)	Case No. 11-348-EL-SSO
to Section 4928.143, Revised 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.)	
In the Matter of the Commission Review)	
of the Capacity Charges of Ohio Power)	Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)	
Company)	

**THE OHIO SCHOOLS’
MEMORANDUM CONTRA AEP OHIO’S MOTION TO CONSOLIDATE**

I. INTRODUCTION

By motion filed September 11, 2012, AEP Ohio¹ requests that these proceedings (“ESP Proceedings”) and the proceeding in Case No. 10-2929-EL-UNC (“Capacity Charge Case”) be consolidated for purposes of rehearing. Disturbingly, in an affront to the Ohio Schools’² due process rights, AEP Ohio seeks to combine the records of the two proceedings such that the evidence admitted in both proceedings could be used to support the Commission’s findings in either case. To support its position, AEP Ohio advances

¹ Ohio Power Company and Columbus Southern Power Company merged effective December 31, 2011. Ohio Power Company is the surviving entity and will be referred to as “AEP-Ohio” or “the Company.”

² Joint Intervenors Buckeye Association of School Administrators, Ohio Association of School Business Officials, Ohio School Boards Association and Ohio Schools Council are collectively referred to as the “Ohio Schools.”

three arguments: (1) consolidation of the records for rehearing and a single order will benefit the Ohio Supreme Court on review, and would “reinforce the record support for the Commission’s decisions;³” (2) procedural timelines for appeal would be the same in both proceedings; and (3) consolidation would have no downside as the parties to the Capacity Charge Case are a subset of the parties to the Proceeding.

II. ARGUMENT

A. CONSOLIDATION OF THE CAPACITY CHARGE CASE AND THE ESP PROCEEDING WOULD BE UNREASONABLE AND UNLAWFUL.

The Commission made clear in its entry of March 7, 2012, at page 17, in the Capacity Charge Case that the Capacity Charge Case would proceed independently of the ESP Proceeding. Specifically, the Commission stated:

Although AEP-Ohio believes that the present [capacity charge] case may be resolved under its modified application for an ESP, the Commission believes that resolution of this case should no longer be delayed. Our decision today temporarily modifying the state compensation mechanism will allow the Commission to fully develop the record to address the issues raised in this proceeding.

Hearing commenced in the Capacity Charge Case on April 17, 2012; the evidentiary record was closed on May 15, 2012; merit briefs were filed on May 23, 2012; the Commission’s order was issued on July 2, 2012; and applications for rehearing were filed August 1, 2012. The ESP Proceeding commenced on May 17, 2012; the evidentiary record was closed on June 15, 2012; and the Commission’s order was issued on August 8, 2012.

³ AEP Ohio Application for Rehearing, at 49

1. *Consolidation is Unnecessary for Ohio Supreme Court Review.*

AEP Ohio advances the uninspiring argument that consolidation of the two records will assist the Ohio Supreme Court's review upon appeal. The Ohio Schools are content that the Commission will issue clear orders in both the Capacity Charge Case and this ESP Proceeding and that the experienced counsel prosecuting and defending the appeals will be able to explain the Commission's decisions to the Court on brief and in oral argument. If AEP Ohio, after review of the imminent entries on rehearing, continues to believe that consolidation is necessary to assist the Court in its decision making, its proper course is to ask the Court to consolidate the two cases for oral argument and let the Court determine, for itself, whether it needs this assistance.

2. *Consolidation is Not Required to Coincide the Procedural Timelines for Appeal.*

AEP Ohio also argues that consolidation would permit the decisions in both cases to be issued on the same date; thus, the timelines for appeal would coincide, presenting an efficient prosecution of appeals. The Ohio Schools note that the Commission already has delayed its issuance of the entry on rehearing in the Capacity Charge Case and already has the discretion to issue each entry on rehearing on the same date, which will provide the same efficiencies for appeal. In any event, issuance of the entries on different dates present no unusual inefficiencies as the Court is accustomed to considering multiple and related appeals. As stated previously, if AEP Ohio believes there would be undue inefficiencies, its appropriate course of action is to ask the Ohio Supreme Court to consolidate the cases for oral argument.

3. ***Consolidation of the Cases for Evidentiary Purposes
Would have a Downside, as it Would Prejudice the Ohio
Schools' Due Process Rights.***

AEP Ohio claims that consolidation would have no downside, as the parties in the Capacity Charge Case are a subset of the parties in the ESP Proceeding. AEP Ohio apparently is suggesting that it is permissible to take administrative notice in the *prior* Capacity Charge Case of evidence admitted in the *later* ESP Proceeding, if the parties are the same.

The doctrine of administrative notice requires that the parties have prior knowledge of, and an adequate opportunity to explain and rebut, the facts administratively noticed. *Allen v. Pub. Util. Comm.* (1988), 40 Ohio St. 3d 184, 186 (“*Allen*”).

As stated previously, the evidentiary hearing in the Capacity Charge Case ended on May 15, 2012; initial briefs were filed on May 23, 2012; the Commission’s decision issued on July 2, 2012; and applications for rehearing were filed on August 1, 2012. The ESP Proceeding’s evidentiary hearing did not commence until May 17, 2012, and did not conclude until June 15, 2012. AEP Ohio did not give opposing parties notice of any facts to be administratively noticed from the ESP Proceeding by the time the initial briefs were filed or the Commission issued its July 2, 2012, order in the Capacity Charge Case. Indeed, AEP Ohio still has not provided the specific evidence for which it seeks notice in the Capacity Charge Case. Thus, the opposing parties have not been provided an adequate opportunity to explain or rebut evidence from the ESP Proceeding as to its use in the Capacity Charge Case. To take notice of such evidence, after briefing and rehearing pleadings have been completed in the Capacity Charge Case, is prejudicial to the Ohio Schools’ due process rights.

III. CONCLUSION

For the foregoing reasons, AEP Ohio's motion to consolidate must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Ohio Schools' Memorandum Contra AEP Ohio's Motion to Consolidate* was served by electronic mail this 17th day August, 2012, upon the following.

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Summary: Memorandum Contra AEP Ohio Motion to Consolidate electronically filed by Mr. Dane Stinson on behalf of Buckeye Association of School Administrators and Ohio Association of School Business Officials and Ohio School Board Association and Ohio Schools Council