

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Alternative)	
Energy Status & Compliance Report)	
Under Rule 4901:1-40-05, Ohio)	Case No. 10-486-EL-ACP
Administrative Code, for Columbus)	
Southern Power Company)	

In the Matter of the Annual Alternative)	
Energy Status & Compliance Report)	
Under Rule 4901:1-40-05, Ohio)	Case No. 10-487-EL-ACP
Administrative Code, for Ohio Power)	
Company)	

STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Rule 4901-1-30, Ohio Administrative Code (“OAC”), provides that any two or more parties to a proceeding may enter into a written or oral stipulation concerning the issues presented in such a proceeding. This document sets forth the understanding and agreement of the parties who have signed below (Signatory Parties) and jointly recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation) without modification, which resolves all of the issues raised in the above-captioned proceedings involving Columbus Southern Power Company and Ohio Power Company (“AEP Ohio” or the “Company”).¹

¹ Ohio Power Company (dba AEP Ohio) formerly consisted of two separate companies, Columbus Southern Power Company and Ohio Power Company. Effective at the end of 2011, Columbus Southern Power Company merged into Ohio Power Company with Ohio Power Company being the surviving entity.

II. SIGNATORY PARTIES

There were no timely intervention filings in these cases (based on the deadline established in the December 5, 2012 Entry) and this Stipulation resolves all the issues in these proceedings as between AEP Ohio and the Commission's Staff.² While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving the issues raised by these proceedings, the Signatory Parties, by and through their respective counsel, stipulate, agree and recommend as set forth below.

III. BACKGROUND AND PROCEDURAL RECITALS

WHEREAS, AEP Ohio is an electric utility as that term is defined in §4928.01(A)(11), Ohio Rev. Code;

WHEREAS, AEP Ohio is an electric utility operating company subsidiary of American Electric Power Company, Inc.;

WHEREAS, in 2008, the General Assembly enacted Substitute Senate Bill 221 (SB 221) which included creation of an alternative energy portfolio standard (AEPS), as outlined in Section 4928.64, Revised Code;

WHEREAS, SB 221 also adopted a new energy efficiency/ peak demand reduction (EE/PDR) mandate, as reflected in Section 4928.66, Revised Code;

WHEREAS, On July 31, 2008, the Company filed an Application in the *ESP I* proceeding (Case No. 08-917-EL-SSO *et al.*) stating that “this application seeks to establish the 2009 baseline for energy savings by using total normalized retail kilowatt hours sold in 2006, 2007 and 2008, adjusted for new economic growth in the Companies’ service territories.... The

² Pursuant to Rule 4901-1-10(C), OAC, the Staff of the Commission (“Staff”) is considered a party for the purposes of entering into a stipulation under Rule 4901-1-30, OAC.

Companies also propose that the same process they present for establishing the 2009 baselines be used for determining future baselines.” (*ESP I*, Application at 9-10);

WHEREAS, the *ESP I* March 18, 2009 Opinion and Order noted in the section called “Baselines and Benchmarks” that AEP Ohio proposes “baselines for meeting the benchmarks for statutory compliance ... excluding economic development load ... The Companies contend that its process is consistent with Sections 4928.64(B) and 4928.66(A)(2)(a), Revised Code.” (*ESP I*, Opinion and Order at 41-42.) While there is some disagreement about the intended scope and extent of the Commission’s ruling on these issues, the Signatory Parties agree on how to resolve the underlying baseline calculations going forward, as reflected in their recommendations set forth below;

WHEREAS, the Commission first adopted OAC Chapter 4901:1-40 on December 10, 2009;

WHEREAS, on April 15, 2010, AEP Ohio filed its 2009 Alternative Energy Status & Compliance Reports under Rule 4901:1-40-05, OAC to initiate the above-captioned cases;

WHEREAS, the Staff issued investigative reports in the above-captioned cases on November 28, 2012 raising the procedural question of whether AEP Ohio followed the requirement in Rule 4901:1-40-03(B)(3), OAC, to file an application for approval to modify the Company’s AEPS baseline, a matter that both Signatory Parties desire to have resolved and confirmed by the Commission;

WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in the cases set forth above.

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission should issue its Opinion and Order in these proceedings accepting and adopting this Stipulation and relying upon its provisions as the basis for resolving all issues raised by these proceedings:

IV. RECOMMENDATIONS

1. AEP Ohio and Staff agree that the method used by the Company for calculating the AEPS baseline in its 2009 filings is reasonable. Specifically, the Signatory Parties submit that load associated with economic development reasonable arrangements approved by the Commission can be excluded from the Company's AEPS baseline calculation. This recommendation is supported by the following considerations:

- a. The Commission has approved the same baseline adjustment method for AEP Ohio relative to the EE/PDR statute, R.C. 4928.66. (*See* Case Nos. 09-1089-EL-POR and 09-1090-EL-POR.) Both the AEPS and EE/PDR mandates became effective with calendar year 2009 and involve calculations of annual benchmark requirements based on the average retail sales from the preceding three years (the denominator calculation is different in that the EE/PDR mandate calls for use of connected load sales while the AEPS mandate excludes shopping load since CRES providers have their own AEPS obligation). (*See* R.C. 4928.64(B); 4928.66(A)(2)(a).) Both the AEPS and EE/PDR mandates identically allow the Commission to reduce the baseline (and thus reduce the benchmark requirement) for "new economic growth." (*Id.*) The Commission's rules acknowledge the Commission's ability to adjust the compliance baselines for new economic

growth, simultaneously adopting parallel provisions for the EE/PDR and AEPS requirements. OAC 4901:1-39-05(B) and OAC 4901:1-40-03(B)(3).

- b. Rule 4901:1-40-03(B)(3), OAC, was not adopted until more than 16 months after AEP Ohio's *ESP I* Application was filed and more than five months before the initial filing in this case. The Company's compliance plan for 2009 was fully executed by December 2009 when this rule was first promulgated. The Signatory Parties recommend that the Commission grant a waiver of Rule 4901: 1-40-03(B)(3), to the extent that the rule applies and is not otherwise fulfilled (the Signatory Parties reserve their respective position on those matters). The parties agree that economic development is beneficial for the state and therefore believe that reducing the baseline for the portion of the load with an economic development rider benefits the public. In approving rate discounts for certain customers under R.C. 4905.31 based on economic development considerations, the Commission has already determined that such discounts attract and retain new load growth that promotes the public interest and advances the economic development of the State of Ohio. AEP Ohio's EE/PDR baselines and its AEPS baselines for 2009, 2010, and 2011 have been filed using substantially the same set of economic development criteria, which currently tracks with the load associated with the discounts recovered from all customers through the Company's Economic Development Rider (EDR). For example, of the 2,542 GWh of economic development load excluded from AEP Ohio's 2009 AEPS baseline (which is based on 2006-2008 load), 2,468 GWh or approximately 97% of the total adjustment relates to Ormet Primary Aluminum Corporation (and

related Hannibal operations) – the same customer addressed in the *ESP I* Opinion and Order (at 43).

2. The Commission should confirm that the adjusted AEPS baseline used by the Company in its compliance reports filed by the Company in these cases are consistent with, and approved under, the governing statute, R.C. 4928.64(B).
3. The Commission should find that the Company has demonstrated compliance with R.C. 4928.64 by moving the renewable energy credits into the Company's GATS subaccount as detailed in Staff's November 28, 2012 Recommendations in this proceeding.
4. The Signatory Parties agree and recommend that the Commission immediately suspend the testimony and hearing deadlines reflected in the December 5, 2012 Entry, pending consideration of adopting this Stipulation. If the Commission does not adopt the Stipulation, it can establish new deadlines for testimony and hearing.

V. GENERAL CONDITIONS

This Stipulation, if adopted by the Commission, will resolve all issues in cases 10-486-EL-ACP and 10-487-EL-ACP. The settlement agreement embodied in this Stipulation was reached only after negotiations between and the Company and Staff, and reflects a bargained compromise involving a balancing of competing interests. Because the Stipulation is an integrated settlement, it is expressly conditioned upon the Commission adopting the same in its entirety without material modification. Rejection of all or any part of the Stipulation and Recommendation by the Commission shall be deemed to be a material modification for purposes of this provision. Upon the Commission's issuance of a decision that does not adopt this Stipulation in its entirety without material modification, or the alternative proposal, if one is

submitted, a Signatory Party may withdraw from the Joint Stipulation and Recommendation by filing a notice with the Commission within thirty (30) days of the Commission's decision. In such event, this proceeding shall go forward at the procedural point at which the Stipulation was filed, and the parties will be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to brief all issues which shall be decided based upon the record and briefs, as if this Stipulation had never been executed.

AGREED THIS 23rd DAY OF JANUARY, 2013.

Per authorization /s/Steven T. Nourse

Steven T. Nourse

On behalf of Ohio Power Company

/s/Thomas G. Lindgren

Thomas G. Lindgren

Assistant Attorney General,

Public Utilities Section

On behalf of the Staff of the Public Utilities

Commission of Ohio

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/23/2013 3:32:50 PM

in

Case No(s). 10-0486-EL-ACP, 10-0487-EL-ACP

Summary: Stipulation electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO