

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast)
Report of Ohio Power Company and) Case No. 10-501-EL-FOR
Related Matters.)

In the Matter of the Long-Term Forecast)
Report of Columbus Southern Power) Case No. 10-502-EL-FOR
Company and Related Matters.)

ENTRY ON REHEARING

The Commission finds:

- (1) On April 15, 2010, pursuant to the requirements of Rule 4901:5-1-03, Ohio Administrative Code, Ohio Power Company (OP) and Columbus Southern Power Company (CSP) (jointly, AEP-Ohio or the Company)¹ filed their 2010 long-term forecast report (LTFR). The LTFR contains information on AEP-Ohio's energy demand, peak loads, and reserves, as well as a resource plan that the Company can implement to meet anticipated demand. On December 20, 2010, AEP-Ohio filed a supplement to its LTFR to offer supporting information concerning its intent to enter a capital leasing arrangement for a total of 49.9 megawatts (MW) of solar energy resources (SER); known as the Turning Point project, to facilitate compliance with its SER benchmarks under Section 4928.64(B)(2), Revised Code.
- (2) On November 21, 2011, AEP-Ohio and Staff (jointly, signatory parties) filed a partial stipulation and recommendation (stipulation), which would resolve all of the issues raised in these proceedings. Pursuant to the stipulation, the signatory parties, *inter alia*, agreed that the Commission should find that there is a need for the 49.9 MW solar facility known as the Turning Point project during the LTFR planning period as described in the

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

stipulation, based on resource planning projections submitted by AEP-Ohio, pursuant to Section 4928.143(B)(2)(c), Revised Code, and the provisions of Section 4928.64(B)(2), Revised Code, that require the Company to obtain alternative energy resources, including SER located in Ohio (Turning Point provision).

- (3) By opinion and order issued on January 9, 2013, the Commission found that the signatory parties had not demonstrated a need for the Turning Point project during the LTFR planning period (LTFR Order). The Commission modified the stipulation submitted by the signatory parties to eliminate the Turning Point provision from the stipulation and approved the remainder of the stipulation.
- (4) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.
- (5) On February 8, 2013, Industrial Energy Users-Ohio (IEU-Ohio) filed an application for rehearing of the LTFR Order.
- (6) In its first assignment of error, IEU-Ohio asserts that the Commission unlawfully and unreasonably determined that Section 4928.143(B)(2)(c), Revised Code, does not provide that a finding of need for an electric generating facility may only occur within an electric security plan (ESP) proceeding. IEU-Ohio contends that the Commission lacks jurisdiction to make a finding of need in a LTFR proceeding, which, IEU-Ohio notes, must be limited to forecasting issues under Section 4935.04(E)(1), Revised Code.
- (7) Next, IEU-Ohio argues that the LTFR Order is unreasonable and unlawful, because it addressed whether the Turning Point project is needed to satisfy the SER requirements found in Section 4928.64(B)(2), Revised Code, and assumed, for purposes of considering the stipulation,

that the Commission has the authority to determine the need for the Turning Point project. IEU-Ohio maintains that the need for the Turning Point project may not be considered even in an ESP proceeding, because Sections 4928.64(E) and 4928.143(B), Revised Code, prohibit recovery of the cost of compliance with the SER requirements found in Section 4928.64(B)(2), Revised Code, through a non-bypassable charge.

- (8) Finally, IEU-Ohio claims that the LTFR Order is unlawful and unreasonable, because it failed to grant the motion to strike a portion of the testimony of AEP-Ohio witness Castle. IEU-Ohio asserts that Mr. Castle's testimony improperly relied upon a settlement agreement from another proceeding involving Dayton Power and Light Company (DP&L), Case No. 10-505-EL-FOR (DP&L Case),² for the purpose of addressing a contested issue in the present cases. IEU-Ohio argues that the Commission has undermined its interest in encouraging settlement agreements in contested cases, by permitting parties to violate the terms of the settlement agreement in the DP&L Case, and thereby impeding future settlement negotiations in proceedings before the Commission.
- (9) Upon review of IEU-Ohio's application for rehearing, the Commission finds that IEU-Ohio has raised no arguments for our consideration that were not already thoroughly addressed in the LTFR Order (LTFR Order at 7, 22-23). In fact, many of IEU-Ohio's arguments were also considered and rejected by the Commission in AEP-Ohio's recent ESP proceedings,³ as well as in the LTFR Order (LTFR Order at 22-23). Consistent with our considerable discretion to

² *In the Matter of the Long-Term Forecast Report of Dayton Power and Light Company and Related Matters*, Case No. 10-505-EL-FOR.

³ *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, *et al.*, Opinion and Order, at 24 (August 8, 2012); Entry on Rehearing, at 55-56 (January 30, 2013).

manage our dockets for the orderly flow of business,⁴ the Commission has explained that the language in Section 4928.143(B)(2)(c), Revised Code, does not restrict our determination of need for an electric generating facility to the time at which an ESP is approved, but is instead intended to ensure that the Commission holds a proceeding before an allowance under the statute is authorized (LTFR Order at 23).⁵ We find no merit in IEU-Ohio's claim that the Commission erred in assuming, for purposes of considering the stipulation, that the determination of need under Section 4928.143(B)(2)(c), Revised Code, may take into account the SER benchmarks found in Section 4928.64(B)(2), Revised Code. The Commission specifically noted in the LTFR Order that we were issuing no decision with respect to this issue (LTFR Order at 26). Finally, we do not agree that the LTFR Order will have a chilling effect on settlement negotiations in future Commission proceedings. In the LTFR Order, the Commission did not rely on, or even mention, Mr. Castle's reference to the settlement agreement in the DP&L Case in addressing our conclusion in the present cases. Additionally, contrary to IEU-Ohio's assertions, the LTFR Order did not enable parties to violate the terms of a settlement agreement that prohibit reliance on that agreement in a future proceeding. As we previously explained, AEP-Ohio was not a signatory party to the settlement agreement in the DP&L Case and cannot be bound by its terms (LTFR Order at 7). Accordingly, the Commission finds that IEU-Ohio's application for rehearing should be denied in its entirety.

It is, therefore,

ORDERED, That IEU-Ohio's application for rehearing be denied. It is, further,

⁴ *Duff v. Pub. Util. Comm.*, 56 Ohio St. 2d 367, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 433 N.E.2d 212 (1982).

⁵ *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, *et al.*, Opinion and Order, at 24 (August 8, 2012).

ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

Andre T. Porter

M. Beth Trombold

SJP/sc

Entered in the Journal
MAR 06 2013

Barcy F. McNeal

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Secretary