

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.)

SECOND ENTRY ON REHEARING

The Commission finds:

- (1) On March 30, 2012, Ohio Power Company (AEP-Ohio) filed an application for a standard service offer, in the form of an electric security plan (ESP), in accordance with Section 4928.143, Revised Code.
- (2) On August 8, 2012, the Commission issued its Opinion and Order, approving AEP-Ohio's proposed ESP, with certain modifications (Order). Further, the August 8 Order directed AEP-Ohio to file proposed final tariffs consistent with the Opinion and Order by August 16, 2012.
- (3) On August 16, 2012, AEP-Ohio submitted its proposed compliance rates and tariffs to be effective as of the first billing cycle of September 2012. By entry issued on August 22, 2012, the Commission approved the proposed tariffs and rates to be effective with the first billing cycle of September 2012.
- (4) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (5) On September 7, 2012, AEP-Ohio, The Kroger Company, Ormet Primary Aluminum Corporation, Industrial Energy Users-Ohio

(IEU), Retail Energy Supply Association, OMA Energy Group (OMAEG) and the Ohio Hospital Association (OHA), the Ohio Energy Group (OEG), FirstEnergy Solutions Corporation (FES), jointly by The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively the Ohio Schools), and jointly by the Ohio Consumers' Counsel (OCC) and Appalachian Peace and Justice Network filed applications for rehearing of the Commission's August 8, 2012 Order. Memoranda contra the various applications for rehearing were filed jointly by Duke Energy Ohio, Inc. and Duke Energy Commercial Asset Management Inc., FES, OCC/APJN, IEU, OMAEG/OHA, OEG, Ohio Schools, and AEP-Ohio on September 17, 2012.

- (6) By entry dated October 3, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the Order.
- (7) On January 30, 2013, the Commission issued its Entry on Rehearing addressing the merits of the various applications for rehearing (January 30 EOR).
- (8) On March 1, 2013, OCC and IEU filed applications for rehearing of the January 30 EOR. On March 11, 2013, AEP-Ohio filed a memorandum contra the applications for rehearing.
- (9) In its application for rehearing, IEU argues that Section 4928.143(B)(2)(d), Revised Code, does not provide the Commission authority to approve AEP-Ohio's retail stability rider (RSR). Specifically, IEU states that the fact that the RSR will result in a non-fuel base generation rate freeze does not satisfy the requirements of Section 4928.143(B)(2)(d), Revised Code, and the determination that the RSR provides certainty and stability goes against the manifest weight of the evidence in this proceeding. IEU also points out that the Commission may not approve a rider that causes the modified ESP to be less favorable in the aggregate than a market rate offer.

AEP-Ohio responds that IEU raised similar arguments in its first application for rehearing and fails to raise any new arguments in its second application for rehearing. AEP-Ohio

adds that IEU's interpretation of Section 4928.143(B)(2)(d), Revised Code, unnecessarily narrows the statute. In addition, AEP-Ohio points out that IEU previously raised arguments regarding the statutory test in its initial application for rehearing and fail to provide any new arguments.

The Commission finds that IEU fails to raise any new arguments for the Commission's consideration in its application for rehearing. In both the order and the entry on rehearing, the Commission determined that the RSR is justified pursuant to Section 4928.143(B)(2)(d), Revised Code. (Order at 31-32; January 30 EOR at 15-16). Similarly, IEU previously raised its arguments pertaining to the statutory test, which the Commission denied in the January 30 EOR. Accordingly, IEU's application for rehearing should be denied.

- (10) In its application for rehearing, OCC claims that the classification of the RSR as a charge related to default service is not supported by the record, violating Section 4903.09 Revised Code, and Section 4903.13, Revised Code.

In its memorandum contra, AEP-Ohio responds that the Commission clearly explained how the RSR falls into default service, and adds that even one of OCC's witnesses agreed that the RSR relates to AEP-Ohio's generation revenues.

The Commission finds OCC's assignment of error is without merit and should be denied. In the entry on rehearing, the Commission emphasized that the RSR meets the statutory criteria contained in Section 4928.143(B)(2)(d), Revised Code, as it is a charge relating to default service that provides certainty and stability for AEP-Ohio's customers. (January 30 EOR at 15-16.) Specifically, the Commission explained that the RSR allows for price certainty and stability for AEP-Ohio's standard service offer (SSO) customers, which, is AEP-Ohio's default service for customers who choose not to shop. (*Id.*) Accordingly, OCC's assignment of error should be rejected.

- (11) In its application for rehearing, IEU claims that the customer rate impact cap fails to identify the incurred costs that may be deferred, but rather only provides that AEP-Ohio may defer the difference in revenue as a result of the customer rate cap. In addition, IEU argues the Commission should identify the

specific carrying charges that will apply to the deferred amount. IEU states that if the Commission continues to authorize the customer rate impact cap deferral, it should set the level of the carrying charges on the deferral balance to a reasonable level below AEP-Ohio's long or short term cost of debt.

In its memorandum contra, AEP-Ohio provides that the carrying cost rate should be the weighted average cost of capital, consistent with Commission precedent and AEP-Ohio's phase in recovery rider. AEP-Ohio opines that the same regulatory principles should be applied here, and any deferrals under the customer rate impact cap would accrue a carrying charge during the period of deferral and a lower debt rate charge during the recovery period.

The Commission finds that IEU's application for rehearing should be denied, as the customer rate impact cap is permissible pursuant to Section 4928.144, Revised Code. Section 4928.144, Revised Code, provides the Commission with discretion to establish a deferral to ensure rate or price stability for customers, which the customer rate cap establishes by limiting any customer rate increases to no more than a 12-percent increase. The Commission determined this was necessary in its order, and emphasized it again in its entry on rehearing. (Order at 70; January 30 EOR at 40). Further, the entry on rehearing clarified that AEP-Ohio was entitled to the deferral of the incurred costs equal to the amount not collected, as well as carrying costs associated with the deferral. We do clarify, however, that these carrying costs should be set at AEP-Ohio's long-term cost of debt rate, as recovery of these costs are not only guaranteed but also are consistent with Commission precedent. Finally, the collection of the deferral is on a non-bypassable surcharge, and protects customers from any potential rate increases associated with AEP-Ohio's newly established non-bypassable riders, consistent with Section 4928.144, Revised Code. Therefore, as the customer rate impact cap complies with Section 4928.144, Revised Code, IEU's arguments should be dismissed.

- (12) IEU argues that the Commission cannot lawfully authorize a non-bypassable rider to recover lost generation revenue pursuant to Section 4928.143(B)(2)(d), Revised Code. IEU

argues that only divisions (b) and (c) of Section 4928.143(B)(2), Revised Code, allow for a generation-related, non-bypassable charge for the recovery of construction costs. Therefore, according to IEU, there is no basis under Section 4928.143(B)(2)(d), Revised Code, to approve the Pool Termination Rider (PTR).

AEP-Ohio notes that while Section 4928.143(B)(2)(b) and (c), Revised Code, specifically require that the charges established there under be nonbypassable, subdivision (d) contains no such requirement. AEP-Ohio reasons that Section 4928.143(B)(2)(d), Revised Code, specifically grants the Commission the authority to establish a non-bypassable charge as part of an ESP.

The Commission finds that IEU's argument is without merit. Section 4928.143(B)(2)(d), Revised Code, specifically permits the Commission to consider the "bypassability" of the "[t]erms conditions or charges relating to limitations on customer shopping for retail electric generation service ... as would have the effect of stabilizing or providing certainty regarding retail electric service" as a component of an ESP. The Commission interprets the language in this section to grant the Commission the authority to approve a particular component of an ESP as bypassable or non-bypassable. Thus, we deny IEU's request for rehearing.

- (13) IEU also argues that the Commission failed to make the necessary findings to demonstrate that the PTR would have the effect of stabilizing or providing certainty regarding retail electric service. IEU asserts that nothing in the record in this case demonstrates that the Pool Agreement prevented an auction for the provision of standard offer service (SSO) and did not have any bearing on the Commission's conclusion in AEP-Ohio's Capacity Case.¹ Accordingly, IEU reasons that there is no basis for the Commission to conclude that termination of the Pool Agreement is "key to the establishment of effective competition." IEU reasserts that the PTR recovers from retail customers lost wholesale Pool Agreement revenue and shifts AEP-Ohio's wholesale risks to retail customers. Therefore, IEU submits that there is no basis for the Commission to find that the PTR has the effect of providing

¹ *In re AEP-Ohio*, Case No. 10-2929-EL-UNC, Order (July 2, 2012).

certainty or stability in the provision of retail electric service to retail customers.

In its memorandum contra, AEP-Ohio submits that IEU's claim that an increase in service offers is not equivalent to certainty or stability in service is misplaced. AEP-Ohio states, as it and other parties to this proceeding have previously asserted, that the nature of the Pool Agreement has historically been to stabilize rates for Ohio ratepayers and, on that basis, AEP-Ohio claims that the PTR, therefore, qualifies as a charge that would have the effect of stabilizing or providing certainty regarding retail electric service in compliance with the requirements of Section 4928.143(B)(2)(d), Revised Code. Further, AEP-Ohio emphasizes the rationale offered in the August 8 Order, that the PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers. Furthermore, AEP-Ohio explains that the rationale offered in the August 8 Order is consistent with the reasoning offered by the Commission in the January 30 EOR, which is essentially that termination of the Pool Agreement and increases in service offers likely will promote price stability, through the development of a more robust and transparent retail electric service market. With that understanding, AEP-Ohio reasons that the Commission properly determined that Section 4928.143(B)(2)(d), Revised Code, authorizes the PTR and adequately explained the basis for its decision.

We find no merit in IEU's claims that the Commission failed to make the necessary findings to demonstrate that the PTR would have the effect of stabilizing or providing certainty regarding retail electric service. While the Commission reconsidered its statutory basis for approval of the PTR in the January 30 EOR, the rationale for approval has not changed. As noted in the August 8 Order "the PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers, without regard to the possible loss of revenue associated with the termination of the Pool Agreement" (Order at 49). The basis for Ohio electric utilities transitioning to a competitive market is to encourage retail electric suppliers to pursue customers with a variety of service offers. A competitive market will ultimately result in more offers for retail electric service for shopping customers and put pressure on AEP-Ohio to retain non-shopping

customers with better service offers. Nonetheless, the Commission limited AEP-Ohio's right to recover under the PTR (January 30 EOR at 59-60), and even assuming that the conditions for pursuing recovery under the PTR were met, AEP-Ohio maintained the burden set forth in Section 4928.143, Revised Code, to first file an application to "demonstrate the extent to which the Pool Agreement benefitted Ohio ratepayers over the long-term and the extent to which the costs and/or revenues should be allocated to Ohio ratepayers... that any recovery it seeks under the PTR is based upon costs which were prudently incurred and are reasonable" (Order at 49). Thus, at this juncture, the PTR has only been approved to facilitate the possibility of recovery. The Commission finds that the rationale previously offered is sufficient to allow AEP-Ohio the possibility to file an application for recovery under the PTR and, therefore, we deny IEU's application for rehearing.

- (14) Finally, IEU again asserts, as argued in its application for rehearing of the August 8 Order, that the approval of the PTR, violates Sections 4928.02(H) and 4928.17, Revised Code. IEU submits that Section 4928.02(H), Revised Code, prohibits the recovery of any generation-related costs through distribution or transmission rates after corporate separation is effective.

In response, AEP-Ohio notes that the IEU made the same arguments in its application for rehearing of the August 8 Order which were rejected by the Commission in the January 30 EOR. AEP-Ohio recommends that the Commission decline to consider the argument again on rehearing.

In yet another attempt to support its arguments about Section 4928.02(H), Revised Code, IEU overstates the January 30 EOR and the Sporn Decision.² We thoroughly considered and addressed these claims in the January 30 EOR. IEU fails to raise any new arguments which persuade the Commission that approval of the PTR violates Sections 4928.02(H) and 4928.17, Revised Code. Thus, we must again deny IEU's request for rehearing.

It is, therefore,

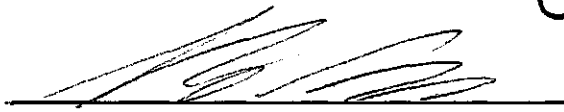
² *In re Ohio Power Company*, Case No. 10-1454-EL-RDR, Finding and Order (January 11, 2012).

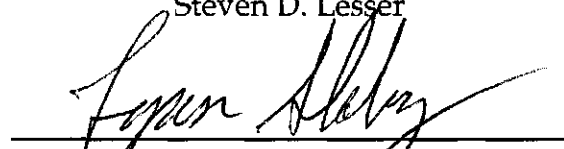
ORDERED, That the applications for rehearing of the January 30 EOR filed by OCC and IEU are denied as discussed herein. It is, further,

ORDERED, That a copy of this Second Entry on Rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

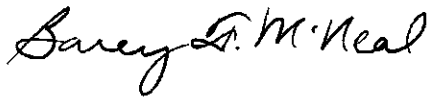

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MAR 27 2012



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Secretary