

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 Administrative) Case No. 10-486-EL-ACP
Code, for Columbus Southern Power)
Company.)

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

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Steven T. Nourse, American Electric Power Service Corporation, One Riverside Plaza, 29th floor, Columbus, OH 43215, on behalf of Ohio Power Company.

Mike DeWine, Ohio Attorney General, by Steven L. Beeler and Thomas G. Lindgren, Assistant Attorneys General, 180 East Broad Street, 6th floor, Columbus, Ohio 43215, on behalf of Staff of the Commission.

OPINION:

I. Background

Ohio Power Company¹ (AEP Ohio) is an electric utility as defined in Section 4928.64, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company 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.

On April 15, 2010, AEP Ohio filed its alternative energy portfolio status report (report) for 2009 in *In the Matter of the Annual Alternative Energy Status & Compliance Report Under Rule 4901:1-40-05, Ohio Administrative Code, for Columbus Southern Power Company*, Case No. 10-0486-EL-ACP, and *In the Matter of the Annual Alternative Energy Status & Compliance Report Under Rule 4901:1-40-05, Ohio Administrative Code, for Ohio Power Company*, Case No. 10-0487-EL-ACP.

On November 28, 2012, Staff filed its findings and recommendations on AEP Ohio's 2009 alternative energy status report. Staff noted that AEP Ohio adjusted its proposed baseline and recommended that the Commission order AEP Ohio to request a reduced baseline. On December 5, 2012, the attorney examiner set this matter for hearing on January 31, 2013. The hearing continued at the request of the parties from January 31, 2013, to February 6, 2013. No motions to intervene were filed in this case. (Staff Ex. 1 and 2.)

Staff and AEP Ohio filed a stipulation and recommendation on January 23, 2013. The stipulation provides for the approval of the method used by AEP Ohio for calculating the alternative energy portfolio standards (AEPS) baseline in its 2009 filings, and submits that the load associated with economic development approved by the Commission can be excluded from the Company's AEPS baseline calculation. The stipulation also confirms that the adjusted AEPS baseline used by AEP Ohio in its compliance reports filed by the Company in these cases are consistent with, and approved under, the governing statute, Section 4928.64(B), Revised Code. Furthermore, the stipulation provides for the transfer of the renewable energy credits into the Company's GATS subaccount as detailed in Staff's November 28, 2012, Finding and Recommendations in this proceeding. (Joint Ex. 1, Staff Ex. 1 and 2.)

On January 25, 2013, AEP-Ohio filed a motion to continue the hearing to February 6, 2013. The motion to continue was granted and the hearing in this matter commenced on February 6, 2013, at the offices of the Commission. At the hearing, AEP Ohio witness William Castle testified in support of the stipulation.

II. Summary of the Application and Comments

In 2008, the General Assembly enacted Amended Substitute Senate Bill 221 (SB 221), which created AEPS, as outlined in Section 4928.64, Revised Code. SB 221 also adopted a new energy efficiency/peak demand reduction (EE/PDR) mandate, outlined in Section 4928.66, Revised Code. On July 31, 2008, AEP Ohio filed an Application in Case No. 08-917-EL-SSO *et al.* (ESP I), seeking 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 AEP Ohio's service territories. AEP Ohio proposed

that the same process they present for the 2009 baselines be used for determining future baselines. (*ESP I*, Application at 9-10, cited in Joint Ex. at 2-3.)

The *ESP I* Opinion and Order issued on March 18, 2009, notes that AEP Ohio proposed “baselines for meeting the benchmarks for statutory compliance...excluding economic development load” and that AEP Ohio contends that its process is consistent with Section 4928.64(B) and 4928.66(A)(2)(a), Revised Code. (*ESP I*, Opinion and Order at 41-42, cited in Joint Ex. at 3.)

The Commission adopted Chapter 4901:1-40, O.A.C., on December 10, 2009. On April 15, 2010, AEP Ohio filed its 2009 Alternative Energy Status & Compliance Reports under Rule 4901:1-40-05, O.A.C. Pursuant to Section 4928.64(B), Revised Code, the Commission may reduce a company’s baseline to reflect new economic growth in the company’s service territory.

Staff issued investigative reports on November 28, 2012, posing the question of whether AEP Ohio followed the requirement in Rule 4901:1-40-03(B)(3), O.A.C., that a company file an application for approval to modify the company’s AEPS baseline. Rule 4901:1-40-03(B)(3), O.A.C., states that:

“An electric utility or electric services company may file an application requesting a reduced baseline to reflect new economic growth in its service territory or service area. Any such application shall include a justification indicating why timely compliance based on the unadjusted baseline is not feasible, a schedule for achieving compliance based on its unadjusted baseline, quantification of a new change in the rate of economic growth, and a methodology for measuring economic activity, including objective measurement parameters and quantification methodologies.” (Staff Ex. 1.)

Staff explains that instead of filing an application requesting a reduced baseline for economic growth, AEP Ohio relied on the methodology approved by the Commission in the Company’s *ESP I* proceeding for calculating AEP Ohio’s baseline for statutory compliance mandates. (Staff Ex. 1 at 5, Staff Ex. 2 at 5.)

In its reports, Staff found that AEP Ohio correctly computed its 2009 compliance obligation based on its proposed adjusted baseline. After a review of the Company’s reserve subaccount data on GATS, Staff confirms that AEP Ohio satisfied, based on the

proposed revised adjusted baseline, its total solar obligation for 2009, as well as the specific minimum in-state solar requirement. (Staff Ex. 1 at 5-6, Staff Ex. 2 at 5-6.)

III. Summary of the Stipulation

As stated previously, a stipulation signed by AEP Ohio and staff was filed in this case on January 23, 2013. The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

- (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 approved by the Commission can be excluded from AEP Ohio's AEPS baseline calculation.
- (2) The Commission should confirm that the adjusted AEPS baseline used by AEP Ohio in its compliance reports filed by the Company in these cases are consistent with, and approved under, the governing statute, Section 4928.64(B), Revised Code.
- (3) The Commission should find that the Company has demonstrated compliance with Section 4928.64(B), Revised Code, by moving the renewable energy credits into AEP Ohio's GATS subaccount as detailed in Staff's November 28, 2012, Recommendations in this proceeding. (Joint Ex. 1 at 4-6.)

IV. Consideration of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-

230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

AEP witness William Castle testifies that the stipulation is the product of serious bargaining among capable, knowledgeable parties. Mr. Castle adds that the stipulation, as a package, benefits ratepayers and the public interest. Mr. Castle explains that the stipulation allows for reducing baselines for economic growth and reduces the cost associated with compliance of the renewable benchmarks, incentivizing further economic growth that benefits the public interest and ratepayers. In addition, Mr. Castle states that the stipulation does not violate any important regulatory principle or practice. (Tr. at 6-7.)

The Commission finds it necessary to modify the stipulation in order to clarify condition one, which provides that the load associated with economic development may be excluded from AEP Ohio's AEPS baseline calculations. As proposed, we believe this condition may allow AEP Ohio to exclude its load associated with economic development from its AEPS baseline calculation for an indefinite period of time. As the stipulation provides that this proposal was agreed upon in light of AEP Ohio's interpretation of the *ESP I* Opinion and Order, we find it appropriate to modify this condition to clarify that AEP Ohio will be allowed to exclude its economic development load from its AEPS baseline calculation only for the term of AEP Ohio's *ESP I*. Further,

the Commission expects that, to the extent that any energy savings or peak demand reduction from a mercantile customer is counted towards compliance with AEP Ohio's energy efficiency and peak demand reduction benchmarks under Section 4928.66, Revised Code, AEP Ohio will not exclude such customers' load from its energy efficiency and peak demand reduction baselines.

Accordingly, as modified, we find that the stipulation entered into by the parties is reasonable and should be adopted. Based on our review of the three-pronged test, the Commission finds the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. The Commission finds that the stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties. In addition, the stipulation also meets the second criterion. As a package, the stipulation advances the public interest by resolving all the issues raised in this matter without resulting in extensive litigation. Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. *Consumers' Counsel*, supra, at 126. Accordingly, we find that the stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AEP Ohio is an electric utility as defined in Section 4928.64, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On April 15, 2010, AEP Ohio filed its application in this case.
- (3) On November 28, 2012, comments on the application were filed by Staff.
- (4) A stipulation signed by Staff and AEP Ohio was filed on January 23, 2013.
- (5) An evidentiary hearing in this matter was held on February 6, 2013.
- (6) The stipulation, as modified, meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the stipulation, as modified, be adopted and approved. It is, further,

ORDERED, That AEP Ohio take all necessary steps to carry out the terms of the stipulation, as modified, and this order. It is, further,


ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

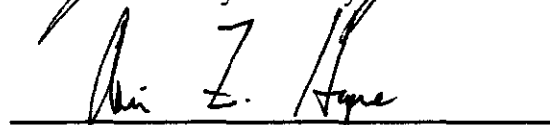
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


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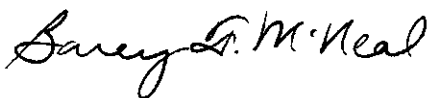

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JJT/sc

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Secretary