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**THE BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Columbus Southern Power)
Company's Application, Pursuant to the)
Commission's Opinion and Order in Case No.)
05-765-EL-UNC, to Adjust Its Power Acquisition)
Rider Included in its Tariff at Original Sheet)
No. 74-1.)

Case No. 07-333-EL-UNC

**BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Ann M. Hotz, Counsel of Record
Jeffrey L. Small
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
hotz@occ.state.oh.us
small@occ.state.oh.us

June 14, 2007

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Commission's Opinion and Order in Case No.)	Case No. 07-333-EL-UNC
05-765-EL-UNC, to Adjust Its Power)	
Acquisition Rider Included in its Tariff at)	
Original Sheet No. 74-1.)	

**BRIEF
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I. INTRODUCTION

The purpose of this proceeding is simply to ensure that Columbus Southern Power Company ("CSP" or the "Company") reasonably incurred the increased costs associated with the power acquisition rider ("PAR") and that the Company does not exceed the 4% annual increase permitted under its rate stabilization plan ("RSP") case.¹ The PAR and its recovery mechanism have already been approved in the 05-765-EL-UNC case ("Mon Power/CSP Transaction Case").² In that case the Commission determined that the PAR would constitute a generation increase required by an administrative order and that CSP

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan*. Case No. 04-169-EL-UNC, Application (February 9, 2004) ("AEP RSP Application") at 9 and Opinion and Order (January 26, 2005) ("AEP RSP Order") at 20.

² *In the Matter of the Transfer of Monongahela Power Company's Certified Territory in Ohio to the Columbus Southern Power Company*, Case No. 05-765-EL-UNC, Opinion and Order (November 9, 2005) ("Mon Power Order") at 15-16.

could recover such increased costs under the 4% annual increase provision of the rate stabilization plan case (“AEP RSP Case”).³

But the real purpose of this case is clarified within AEP’s RSP Application, not in the Mon Power/CSP Transaction Case. The AEP RSP Application and the resulting AEP RSP Order requires CSP to make a showing that the increased generation costs requested under the 4% increase mechanism were reasonably incurred.⁴ AEP agreed in its RSP Application that if it did incur additional costs and wanted to recover those costs, it would make a showing that the increased costs were reasonable at a hearing.⁵ The Commission retained that provision as it was structurally proposed in the Commission’s Opinion and Order, but modified the proposal so that AEP could not recover an average of 4% over three years; instead AEP could recover only 4% each year of the three years.⁶

Through its testimony, the Industrial Energy Users-Ohio (“IEU”) has attempted to reopen the Mon Power/CSP Transaction Case by proposing that the Commission redesign the recovery mechanism the Commission ordered in that case. This attempt by IEU to further reduce the amount industrial customers contribute to the PAR is not only inappropriate and unlawful, but is also unfair to residential customers.

The Commission has already determined that the current kwh cost recovery mechanism of the PAR meets the inter-utility transaction review statutory standards of R.C. 4905.48 and the service territory transfer standards under 4933.85. R.C. 4905.48 requires the Commission to find that the application will provide that the “public thereby

³ Id.

⁴ RSP Application at 9.

⁵ Id.

⁶ RSP Order at 20.

will be provided adequate service for a just and reasonable rate.” R.C. 4933.85 requires that the Commission permit transfer of a service territory only if it is within the “public interest.” Those standards are not at issue in this case, and accordingly the Commission should not reopen issues that were properly reviewed and resolved in the Mon Power/CSP Transaction Case.

Even if the Commission did reconsider the rate design that it approved in the Mon Power/CSP Transaction Case, it could not require residential customers to pay for an additional amount of the PAR under the “reasonable rate” standard of R.C. 4905.48 or the “public interest” standard of R.C. 4933.85. All the residential customers of CSP are already paying costs that resulted solely from the stipulation that Mon Power’s industrial customers entered into with Mon Power. These costs do not relate in any manner to the risks or benefits associated with most of CSP residential customers.

In the Mon Power electric transition plan (“ETP”) case, IEU entered into a stipulation in which it agreed to end the market development period in 2003.⁷ Having obtained the benefits from the stipulation in exchange for assuming that risk, IEU’s members should have been required to bear the cost of that risk. After Mon Power attempted to enforce the terms of the agreement it had with the industrial customers through multiple litigation procedures, the Commission protected the industrial customers and required residential customers, along with industrial and commercial customers, to

⁷ *In the Matter of the Application of Monongahela Power Company for Approval of Transition Plan, Pursuant to §4928.31, Revised Code and for the Opportunity to Receive Transition Revenues as Authorized Under §§4928.31 to 4928.40, Revised Code.* Case No. 00-02-EL-ETP, Stipulation and Recommendation (June 22, 2000) at 3.

pay the costs of the “litigation termination rider.”⁸ The Commission explained its decision thus:

To spread this surcharge over a larger customer base greatly decreases the impact of the surcharge and reduces the rate shock on the businesses in southeastern Ohio helping to sustain economic development in the region and throughout the state.⁹

The Commission’s protection of industrial customers in that instance came at a cost to residential customers because residential customers had not benefited from a rate reduction in exchange for an early end to the market development period. Residential customers had paid to keep the market development period longer, until 2005. Even so, the Commission required residential customers to also pay for the higher risk bargained for by the industrial customers.

Now, the industrial customers ask that residential customers pay even more of the power costs associated with the transfer of Mon Power to the CSP service territory. Neither IEU nor the Commission can justify all of CSP residential customers’ paying even more for the Mon Power/CSP merger, and should therefore leave the power acquisition recovery mechanism as the Commission has approved it..

II. STATEMENT OF FACTS

A. Procedural History

This case affects the electric prices that 635,000 residential customers pay to CSP. This case results from decisions in two cases: the Commission’s Opinion and Order that approved a plan in which CSP acquired the Monongahela Power Company, the Mon

⁸ Mon. Power Order at 18-20.

⁹ Id. at 20.

Power Order and the Commission's Opinion and Order approving the AEP RSP Order.

The Commission initiated the case through an Entry dated June 14, 2005, stating:

Based on advancing the public interest and promoting rate stabilization for Mon Power's existing customers, the Commission orders Mon Power and CSP to immediately pursue potential terms and conditions for transferring Mon Power's Ohio territory to CSP.¹⁰

Eventually, Mon Power and CSP proposed a plan that would require the Mon Power customers (who were to be transferred to the CSP service territory) and the CSP customers to pay the PAR. CSP and Mon Power designed the PAR to allow CSP to recover the costs associated with purchasing power that CSP would need to provide power to the new additional Mon Power customers CSP had not previously planned to serve. The PAR would recover the costs of purchasing power for Mon Power customers that was above the RSP rate that was approved in CSP's RSP docket.

In the Mon Power Order, the Commission approved the PAR and the kwh recovery mechanism as consistent with reasonable rates and the public interest. In addition, the Commission stated that its approval of the PAR "is the type of administrative order contemplated under CSP's RSP that would result in consideration of an additional generation rate increase"¹¹ and that the "calculation of the Power Acquisition Rider must not exceed the 4 percent limit."¹² Moreover, the Company would

¹⁰ *In the Matter of the Certified Territory of Monongahela Power Company*, Case No. 05-75-EL-UNC, Entry (June 14, 2005) at 2.

¹¹ Mon Power /CSP Order at 17.

¹² *Id.* at 18.

have to seek approval of any additional increases to the PAR and justify those increases as required under the additional generation rate increase provision of the AEP's RSP.¹³ Nothing in the Mon Power Order stated, or even implied, that the Commission would provide for additional review of the cost recovery mechanism.

B. Positions of Witnesses

1. IEU Witness Joseph G. Bowser

IEU witness Joseph G. Bowser proposed that instead of continuing the uniform volumetric rate per kwh collection mechanism that the Commission established in the Mon Power/CSP Case, the PAR recovery mechanism should be changed. Mr. Bowser recommended that the recovery of PAR costs be based upon a uniform percentage of generation rates paid by the individual customers. IEU witness Bowser claims that this "uniform percentage approach" will more appropriately reflect the demand component of rates and is more consistent with the purpose of PAR.¹⁴ In his testimony, Mr. Bowser provided an example of how his mechanism would reduce a GS-4 industrial customer's rates at a hypothetical average usage level. He also provided an example of how his mechanism would increase an R-R residential customer's rates at a hypothetical usage level. Moreover, Mr. Bowser showed that during months with hotter weather the industrial customers' rates would increase. But he did not make a similar showing regarding how residential rates would be affected during higher usage months.

¹³ RSP Order at 21.

¹⁴ IEU Exh. (Bowser) 1 at 4.

Although Mr. Bowser insisted that his proposed methodology would not produce unreasonable electric bill outcomes,¹⁵ he did admit that he had not applied it to any rates other than those of schedule GS-4 and schedule R-R.¹⁶ Additionally, he admitted he was not familiar with some of the rate schedules¹⁷ and did not know whether certain of the rates schedules had demand charges associated with them.¹⁸

2. OCC Witness Michael P. Haugh

OCC witness Michael P. Haugh submitted rebuttal testimony in response to IEU witness Bowser. First, Mr. Haugh stated that Mr. Bowser's complaint that little discussion was made about the PAR recovery mechanism during the Mon Power/CSP Transaction Case was not reasonable because IEU participated in that case and neither complained about the methodology nor proposed an alternative.¹⁹

Second, OCC witness Haugh stated that IEU's proposed retail recovery mechanism is inappropriate because it is inconsistent with the wholesale price CSP obtained through its RFP.²⁰ Mr. Haugh pointed out that CSP witness David M. Canter stated that the bidders provided a price per mwh that reflected all costs associated with capacity, energy, ancillary services, congestion and transmission losses.²¹ This mwh wholesale rate is best translated to a retail rate through a kwh rate.

¹⁵ Id. at 6.

¹⁶ Tr. Vol. I at 42-44.

¹⁷ Id.

¹⁸ Id.

¹⁹ OCC Exh. 1 (Haugh) at 4.

²⁰ Id. at 5.

²¹ Id. at 4.

Third, Mr. Haugh found Mr. Bowser's comparison of the effect of IEU's proposed PAR recovery mechanism between an industrial customer and a residential customer to be misleading.²² In the example Mr. Bowser provided for an industrial customer, he not only calculated a rate for an industrial customer using a hypothetical usage amount that was much higher than average for that class of customers (140.2 million kwh per year versus the GS-4 average of 88.3 million kwhs per year)²³, but also calculated the rate for industrial customers using 20% more during higher use periods.²⁴ Mr. Bowser did not provide a similar calculation with a similar assumption in the residential customer example. But he should have because residential customers' usage during the summer is more likely to increase with hot weather and more likely to be 20% more or higher than average during the summer months.

For that reason, Mr. Haugh calculated the rate for R-R customers using IEU-Ohio's methodology and assuming a 20% increase in usage. Mr. Haugh found that during high use months, residential customers under the R-R schedule would pay 24% more under IEU's methodology and likely even more during very high use months when they would have the largest bills.²⁵

Fourth, Mr. Haugh testified that IEU's recovery mechanism would be unreasonable based upon the fact that residential customers are already paying the costs of larger customers. Although CSP residential customers had no part in the litigation that

²² Id. at 5-6.

²³ The average of 88.3 million kwhs per year was calculated using IEU Exh. 4, Second Page.

²⁴ IEU Exh. 1 (Bowser) at 6.

²⁵ OCC Exh. 1 (Haugh) at 5-6.

Mon Power had agreed to terminate in exchange for a \$10 million surcharge requested, the Commission required the CSP residential customers to pay for part of the \$10 million surcharge.²⁶ Therefore, Mr. Haugh stated that the CSP residential customers are already paying more than they should for the transfer of the Mon Power service territory to the CSP service territory. Asking residential customers to pay an additional share would result in unreasonable rates.²⁷

III. STANDARD OF REVIEW AND BURDEN OF PROOF

A. Standard of Review

This application was filed by AEP pursuant to a requirement of the AEP RSP Case, 04-169-EL-UNC, that any additional generation rate increases incurred and required by an administrative order be subject to a Commission hearing and capped at 4% per year.²⁸ AEP proposed this provision in its RSP application, and proposed that during the hearing it would be required to show that “such expenditures were reasonably incurred.”²⁹ In the resulting Order, the Commission accepted AEP’s proposed additional generation rate increase provision with the modification that annual rate increases be capped at 4% per year rather than capped at the average of 4% per year.³⁰ Accordingly, the standard of review in this case is whether the new generation expenditures for which CSP is requesting recovery were “reasonably incurred.” The burden of proof is on the

²⁶ Id. at 6.

²⁷ Id.

²⁸ Id.

²⁹ AEP RSP Application at 9.

³⁰ AEP RSP Order at 20.

Company to show that the PAR increases were reasonably incurred since the Company agreed in its application to “make a showing.”³¹

IV. ARGUMENT

A. The PAR Cost Allocation Methodology Is Not Properly Reviewed In This Case

The purpose of this case is to determine whether the increase in PAR expenditures CSP is attempting to recover in this case were reasonably incurred, not to determine the reasonableness of rates among rate classes or whether the PAR recovery mechanism is in the public interest. Therefore, IEU’s request to revise the PAR recovery mechanism is improper and unlawful.

Although the Mon Power/CSP Transaction Case initiated the PAR recovery mechanism, nothing in the Mon Power/CSP Transaction Case requires the Commission to hold a hearing on increases to the PAR. Instead, it is the AEP RSP Case that established the additional generation service rate increases provision that is the basis for this hearing. That provision requires increases in the PAR to be subject to hearing and a showing by CSP that the expenditures were reasonably incurred. That provision provides the sole purpose for this hearing.

The cost recovery mechanism was established in the Mon Power/CSP Transaction case, which provides for no further consideration and is no longer legally subject to review. The only purpose of this hearing is for CSP to show that it reasonably incurred additional generation costs. Therefore, the Commission should disregard IEU’s testimony requesting a change in the recovery mechanism.

³¹ RSP Application at 9.

B. Even If The PAR Cost Recovery Mechanism Were A Proper Subject Of This Case, The Change In The Mechanism Proposed By IEU Does Not Result In Reasonable Rates And Is Not In The Public Interest.

OCC witness Haugh demonstrates in his testimony that the IEU's proposed PAR cost recovery mechanism provides for a one-sided shift of costs from large customers to residential customers, and could result in rate shock during summer months. The change in the cost recovery mechanism is contrary to both the "reasonable rates" standard necessary to be met under R.C. 4905.48 and the "public interest" standard under R.C. 4933.85.

OCC witness Haugh identified three reasons that IEU's proposed PAR cost recovery mechanism neither provides for reasonable rates nor is in the public interest. First, the percentage of rates methodology proposed by Mr. Bowser does not logically translate from the mwh wholesale rate CSP obtained from winning bidders in the RFP for the additional generation. The RFP was for full requirements generation, not for energy and demand. Moreover, many of the rates paid by different customer classes do not include a demand component and therefore should not be required to pay a rider in this case that is based upon one.

If IEU perceived that taking into consideration the demand component and other cost causation issues was so important in the PAR cost recovery mechanism, it should have provided testimony in the Mon Power/CSP Transaction case to support its view that the proposed cost recovery mechanism does not reflect cost causation. An arbitrary, flat percentage of rates no better reflects actual cost causation by different customer classes than does the kwh methodology approved by the Commission.

Second, Mr. Haugh identified a flaw in Mr. Bowser's assertion that IEU's proposed percentage of rates methodology would not lead to unreasonable rates for residential customers.³² Mr. Bowser applied his allocation methodology only to one hypothetical usage amount by R-R customers.³³ During summer months, however, R-R customers and all residential customers are just as likely to experience hot weather as are industrial customers. Applying only a 20% increase in average usage showed that the IEU methodology would lead to an increase of 24% in PAR rates, which is unreasonable.³⁴ And because most residential customers must already pay very large bills in these summer months, such an increase in PAR rates could lead to rate shock. The Commission has identified preventing rate shock as being in the public interest.³⁵

Third, Mr. Haugh pointed out that the residential customers have already been required to pay a share of the \$10 million that Mon Power identified as the litigation termination surcharge and charged to large customers who were involved in the litigation.³⁶ OCC reasonably argued in the Mon Power/CSP Transaction Case that residential customers should not be required to pay for a litigation termination surcharge because the related litigation could not have benefited residential customers.³⁷ Residential customers did not benefit from lower rates that the industrial customers

³² IEU Exh. 1 at 6 (Bowser).

³³ OCC Exh. 1 at 6 (Haugh).

³⁴ IEU Exh. 1 at 6-7 (Bowser).

³⁵ *In the Matter of the Application of The Dayton Power and Light Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service*, Case No. 91-414-EL-AIR, Opinion and Order at 27 (January 22, 1992).

³⁶ OCC Exh. 1 at 6 (Haugh).

³⁷ Mon Power/CSP Transaction Case, OCC Application for Rehearing at 2 (December 19, 2005).

presumably did in exchange for assuming the risk that the larger customers were attempting to avoid through the litigation.

Nonetheless the Commission required the residential customers to pay for part of the litigation termination surcharge on the basis that residential customers in the former Mon Power service territory would benefit from any economic development benefits achieved through the surcharge.³⁸ However, not all CSP residential customers are in the former Mon Power service territory region and the degree to which all CSP residential customers will benefit from the surcharge is not clear. Accordingly, CSP residential customers have already paid a generous share of the costs of the transfer of Mon Power customers into the CSP service territory and should not be required to pay even more as suggested by IEU.

V. CONCLUSION

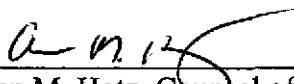
The sole purpose of the hearing in this case is for CSP to make a showing that the increased generation charges CSP is requesting as part of the PAR were reasonably incurred. For that reason, the Commission should disregard requests made by IEU to change the PAR recovery mechanism. Even if it were proper to reconsider the recovery mechanism in this case, the alternative recovery mechanism proposed by IEU would lead to unreasonable rates for CSP residential customers and would not be in the public interest. The RFP obtained a wholesale price based on a mwh price and would be best translated into a retail price based on the current kwh recovery mechanism. The residential customers are already paying for more of the costs of the transfer of the Mon

³⁸ Mon Power Order at 20.

Power service territory to the CSP territory than they caused by paying for part of the \$10 million surcharge that was caused by litigation between Mon Power and large customers. Moreover, the recovery mechanism proposed by IEU would lead to a very large increase in rates for residential customers during high use periods and could lead to rate shock.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

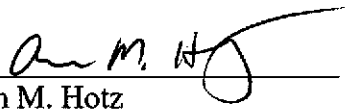


Ann M. Hotz, Counsel of Record
Jeffrey L. Small
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
hotz@occ.state.oh.us
small@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Initial Brief was served electronically and by regular U.S. Mail Service, postage prepaid, on the persons stated below, this 14th day of June 2007.


Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Thomas Lindgren
Public Utilities Section
Attorney General's Office
180 East Broad Street, 9th Floor
Columbus, OH 43215

Samuel C. Randazzo
Lisa McAlister
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215

David C. Rinebolt
Ohio Partners for Affordable Energy
P.O. Box 1793
Findlay, OH 45839

Michael R. Smalz
Joseph Maskovyak
Ohio State Legal Services Association
555 Buttles Avenue
Columbus, OH 43232-1137

Marvin Resnik
American Electric Power
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Richard Sites
Ohio Hospital Association
155 East Broad St., 15th Fl.
Columbus, OH 43215

Greta.See@puc.state.oh.us
Christine.Pirik@puc.state.oh.us
Thomas.Lindgren@puc.state.oh.us
ricks@ohanet.org
msmalz@oslsa.org
jmaskovyak@oslsa.org
drinebolt@aol.com
sam@mwncmh.com
lmcaster@mwncmh.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
miresnik@aep.com