

FILE

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of Application of)
Columbus Southern Power Company) Case No. 08-917-EL-SSO
for Approval of its Electric Security Plan; an)
Amendment to its Corporate Separation)
Plan; and the Sale or Transfer of Certain)
Generation Assets)

In the Matter of the Application of Ohio)
Power Company for Approval of its) Case No. 08-918-EL-SSO
Electric Security Plan; and an Amendment)
to its Corporate Separation Plan)

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM CONTRA JOINT MOTION
FOR CONTINUANCE OF HEARING
AND EXTENSION OF TIME**

INTRODUCTION

Columbus Southern Power Company and Ohio Power Company (collectively, AEP Ohio) filed their initial Electric Security Plan (ESP) application under §4928.143, Ohio Rev. Code, on July 31, 2008, the day that Am. Sub. S.B. No. 221 (S.B. 221) became effective.¹ Governor Strickland had signed S.B. 221 ninety days earlier on May 1, 2008.

While much of S.B. 221 focuses on substantive regulatory provisions, one procedural aspect of S.B. 221 is critical to the Joint Motion now pending before the Commission. In particular, §4928.143 (C)(1), Ohio Rev. Code, requires that: "The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date" The House version of the legislation originally had set a 120-day period for the Commission

¹ OCC incorrectly states that AEP Ohio's application was filed on August 1, 2008. (OCC Memorandum in Support, p.1).

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to rule on a utility's initial application for an ESP. In response to concerns raised by at least one of the Joint Movants, the House extended that time period to 150 days. The 150-day requirement was retained in the as-passed version of S.B. 221. As applied to AEP Ohio's filing, the 150-day period ends on December 28, 2008.

With this legislative mandate in mind, an Attorney Examiner's Entry was issued on August 5, 2008 setting out the procedural schedule for this proceeding. In accordance with that schedule, a technical conference was scheduled for and held on August 19, 2008, motions to intervene are due by September 4, 2008, intervenors' testimony is due by October 17, 2008, discovery requests, other than deposition notices, must be served by October 21, 2008 and Staff's testimony is due by October 24, 2008. The hearing is set to begin November 3, 2008.

Now, approximately three weeks after the Entry setting the procedural schedule (and after approximately 20% of the time has elapsed between the Entry's issuance and the scheduled start of the hearing) the Ohio Consumers' Counsel, Ohio Environmental Council, Ohio Partners for Affordable Energy and the Sierra Club, Ohio Chapter, have filed a motion to push back by sixty days the discovery deadline, the filing date for intervenor testimony and the hearing. Under that schedule, the hearing would not even start until after the date by which the Commission is required to issue its order in this proceeding. Apparently sensing that a sixty-day delay would not, and, given the 150-day requirement, legally could not be granted, the Joint Movants alternatively seek a fifteen-day delay of the discovery deadline, intervenor testimony due date and start of the hearing.

For the reasons set forth below AEP Ohio believes that both of the Joint Movants' proposals should be denied. If, however, the Commission is inclined to provide a modest extension of the hearing date, commencement of the hearing should not be any later than November 12, 2008. If the start of the hearing is delayed, the Commission should make clear that if its order ruling on AEP Ohio's proposed ESP is delayed beyond December 28, 2008, it will permit AEP Ohio to implement a surcharge to collect the ultimately authorized increase in revenues that would have been collected had the order been issued within the 150-day time period set by the General Assembly.

Further, to the extent the hearing date is set back, the other procedural dates should not be set back an equal amount of time. For instance, the Joint Movants have not asked to extend the date for filing interventions and there is no reason to do so. Also, under the current procedural schedule, parties have only two business days to review intervenors' testimony and prepare and serve discovery concerning that testimony. If the beginning of the hearing is set back, the prior procedural schedule dates should be adjusted so that a substantial portion of the newly available time be allocated to the time available for discovery after the filing of intervenors' testimony. For instance, if the start of the hearing were delayed by nine days to November 12, 2008, the time for filing intervenors' testimony would be extended three days (to October 20, 2008) and the deadline for discovery (other than depositions) would be extended six days (to October 27, 2008). This would provide a modest seven calendar days to prepare and serve discovery on intervenors' testimony.

ARGUMENT

The Joint Movants seek relief from the Commission which exceeds the relief they were able to achieve through the legislative process. They rest their motion on two basic arguments: These cases involve a lot of important issues and the procedural schedule set by the Commission is “constricted.” Even if the Joint Movants’ support for these arguments were compelling, which it is not, §4928.143 (C)(1), Ohio Rev. Code, requires a Commission order in this case by December 28, 2008. That may leave less time than the Joint Movants are accustomed to for prosecuting major cases, but it is what the law requires. While the Commission typically has the authority to set the procedural schedules for cases within its jurisdiction, it is clear that such authority must be exercised in a manner consistent with this applicable statutory requirement.

When the Joint Movants’ motion is viewed in the context of the applicable statutory requirement it is clear that the Commission cannot grant an extension, such as the proposed sixty-day extension, which would have the hearing begin after the date by which the Commission is required to issue its order on the application. Even the fifteen-day extension will turn the current procedural schedule, which as it is will result in a “close call” with the statutory deadline, into a strong likelihood that the statutory deadline will be unmet.²

Even if the overriding statutory requirement did not preclude the relief sought by the Joint Movants, their arguments still would not be compelling. The current procedural schedule permits nearly three months for discovery, plus additional time for depositions.

² Similar motions were filed by some of the Joint Movants in Case No. 08-920-EL-SSO (Duke Energy Ohio’s ESP case) and in Case No. 08-935-EL-SSO (FirstEnergy companies’ ESP case). Because the hearing dates in those cases are set to begin on October 20, 2008 and October 2, 2008 respectively, the same alternative fifteen-day extensions in all three cases are impacted differently by the statutory deadline.

The only discovery time crunch under the current procedural schedule is the period of two business days which will be available after the intervenors' testimony is filed to prepare and serve discovery on that testimony -- a timing problem that will impact AEP Ohio more than any other party.

In addition, the three months from the filing of the applications to the commencement of the hearing allows sufficient time for parties to prepare for the hearing and, if interested, to explore paths to negotiations concerning settlement of the issues in this proceeding. As for the issues presented in this case, their significance should not be minimized or trivialized. That is not to say, however, that the issues are too complex to understand or too numerous for the Joint Movants to come to terms with.³ The Joint Movants' assertion to the contrary is simply another way of saying that the General Assembly did not know what it was doing when it imposed the 150-day deadline. While stakeholders might quarrel with the judgments reflected in S.B. 221, or debate the meaning of certain provisions of S.B. 221, there is no ambiguity in the 150-day dictate in §4928.143 (C)(1), Ohio Rev. Code. That clear dictate requires that the Joint Movants' motion be denied.

³ It should be pointed that while there may be transmission-related issues in other ESP cases pending before the Commission (cases in which some of these Joint Movant have filed similar motions) there are no issues in this case concerning whether AEP Ohio "should recover certain transmission and transmission-related costs, including ancillary and congestion costs through a bypassable rider" (Joint Movants' Memorandum in Support, p.2). This statement by the Joint Movants may be due to the "cookie cutter" nature of their filing.

CONCLUSION

For the reasons stated above, the Commission should deny the Joint Movants' motion. If, however, the Commission decides to grant some additional time to the procedural schedule, the hearing should not begin any later than November 12, 2008. This is the latest starting day that has a reasonable chance for completing the hearing before the Thanksgiving holiday, so that briefing could be completed in December 2008.⁴ Moreover, based on the August 5th Entry establishing the procedural schedule, one of AEP Ohio's counsel committed to a hearing in another jurisdiction for the first two weeks of December. Four of AEP Ohio's witnesses are also involved in that proceeding.

Because any extension will virtually assure that the Commission's order will issue after December 28, 2008, the Commission should condition such an extension on adoption of AEP Ohio's procedure for being made whole. The Joint Movants characterize AEP Ohio's proposal as "reasonable and should be acceptable to all parties." (*Id. at 6*).

Respectfully submitted,



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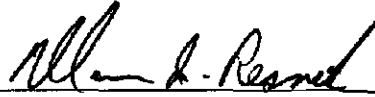
⁴ Even with this date, some scheduling issues would need to be addressed to accommodate witnesses who were planning to be out of the office the entire week of Thanksgiving.

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CERTIFICATION OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Joint Motion for Continuance of Hearing and Extension of Time was served by U.S. Mail and electronic mail upon counsel identified below this 2nd day of September, 2008.



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