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THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

ENTRY

The attorney examiner finds:

- (1) On July 31, 2008, Columbus Southern Power Company and Ohio Power Company (collectively, AEP) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (2) By entry issued August 5, 2008, the attorney examiner established a procedural schedule for this proceeding. On September 5, 2008, following a joint motion by the Office of the Ohio Consumers' Counsel (OCC), Ohio Environmental Council, The Sierra Club Ohio Chapter, and Ohio Partners for Affordable Energy for an extension of 60 days or, in the alternative, 15 days, the examiner ordered a two-week extension of the evidentiary hearing date.
- (3) Additionally, by entry dated September 24, 2008, the attorney examiner issued an entry scheduling five local hearings in this matter, commencing on October 14, 2008.

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- (4) Subsequently, on September 29, 2008, OCC, Ohio Environmental Council, and Ohio Partners for Affordable Energy (collectively, appellants) filed a joint interlocutory appeal, requesting certification of the attorney examiner's entry scheduling local public hearings to the Commission for its review. On October 6, 2008, AEP filed a memorandum contra the joint interlocutory appeal.
- (5) The appellants claim that the entry causes undue prejudice to Ohio consumers and the appellants, and presents a new or novel question of law or policy. With regard to prejudice, the appellants assert that the Commission must establish a schedule that allows for notice to be published at least 30 days prior to each public hearing and that the notice must include the summary of the major issues that was previously proposed by OCC, the Ohio Environmental Council, The Sierra Club Ohio Chapter, and Ohio Partners for Affordable Energy. Without such notice, the appellants insist that the public's opportunity to learn of the hearings, to prepare for testifying, and to adjust their schedules will be limited. The appellants suggest that the Commission's summary of the application will leave the public not knowing what issues they should address in their testimony. With regard to a new or novel question, the appellants point to the need for transparency in the regulatory process and the new elements of Ohio policy that were recently adopted as part of Section 4928.02, Revised Code. They also note that the applications in these proceedings result in the consideration of AEP's first ESP. In support of their appeal, the appellants cite to a 1991 electric fuel component proceeding in which the Commission recognized that notice must not only meet any applicable legal requirements, but also must reach as many customers as possible. *In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Ohio Power Co.*, Case No. 91-101-EL-EFC, Opinion and Order (May 16, 1991). The appellants contend that an immediate determination is needed in order to prevent undue prejudice in the event the Commission ultimately reverses the ruling.
- (6) In its memorandum contra, AEP contends that the request for certification and application for review fails to set forth any new or novel question or interpretation of law or policy and does not allege a departure from past precedent. AEP

points out that two recent entries support AEP's position, relying on a reference to the statutory requirement that requires the Commission to issue an order regarding the ESP application within 150 days after the filing date (see *In the Matter of the Application of Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co. 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. 08-935-EL-SSO, Entry (September 30, 2008); *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al., Entry (October 1, 2008)). The scheduling of local public hearings is, according to AEP, neither new nor novel. AEP states that the appellants failed to demonstrate that the notice for the local public hearings would result in undue prejudice or expense to residential customers, noting that OCC, the statutory representative of AEP's residential customers, has had a full opportunity to review AEP's application and prepare and file testimony in the proceeding. AEP also asserts that the content of the notice adequately informs readers of the scope of the issues involved in this case, and Commission precedent does not mandate a restatement of the entire application. Further, AEP surmises that canceling the scheduled hearings and rescheduling them at this late date will only confuse and anger customers.

- (7) Rule 4901-1-15(B), Ohio Administrative Code (O.A.C.), sets forth the substantive standards for interlocutory appeals. The rule provides that no party may take an interlocutory appeal from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule or unless the appeal is certified to the Commission pursuant to paragraph (B) of the rule. The ruling that is the subject of the joint interlocutory appeal is not one of the four specific rulings enumerated in paragraph (A) of Rule 4901-1-15, O.A.C. Therefore, the joint interlocutory appeal should only be certified to the Commission if it meets the requirements of paragraph (B) of that rule.
- (8) Paragraph (B) of Rule 4901-15, O.A.C., specifies that an attorney examiner shall not certify an interlocutory appeal

unless the attorney examiner finds that the appeal presents a new or novel question of law or policy or is taken from a ruling that represents a departure from past precedent and that an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the Commission ultimately reverse the ruling in question. In order to certify an interlocutory appeal to the Commission, both requirements need to be met. In this case, neither provision was satisfied.

- (9) With respect to the first provision, whether the appeal presents a new or novel question of law or policy or is taken from a ruling that represents a departure from past precedent, the attorney examiner finds that the joint appeal does not present a new or novel question of law or policy. Although this proceeding is one of the first cases under the statutory framework established by Am. Sub. Senate Bill 221, the Commission and its attorney examiners have had years of experience scheduling local public hearings in cases affecting rates; therefore, the appeal does not present a new or novel question of law. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 05-376-EL-UNC, Entry at 2 (May 10, 2005).
- (10) Further, the attorney examiner finds that the joint interlocutory appeal is not taken from a ruling that represents a departure from past precedent. As recognized by AEP, this proceeding is similar to the two other ESP proceedings currently pending before the Commission where the attorney examiners recently denied certification on similar grounds. *In the Matter of the Application of Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co. 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. 08-935-EL-SSO, Entry (September 30, 2008); *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al., Entry (October 1, 2008). The proceeding at issue is also analogous to cases involving applications for an increase in rates filed pursuant to Section 4909.18, Revised Code. It has not been Commission practice in rate cases, where local public hearings are required by

statute, to provide 30 days notice. The notice provided in this case is consistent with Commission precedent.

- (11) In addition, the joint interlocutory appeal did not establish that an immediate determination by the Commission was needed to prevent the likelihood of undue prejudice or expense to one or more of the parties. As referenced previously, Section 4928.143(C)(1), Revised Code, requires the Commission to issue a decision on AEP's application for approval of its application for an ESP within 150 days after it is filed. As such, the attorney examiner cannot conclude that there is likely to be undue prejudice or expense to one or more of the parties as a result of an effort to comply with a statutory mandate. The attorney examiner also notes that the local hearings are not scheduled to commence until more than 30 days after appellants and another movant requested, on August 28, 2008, the scheduling of local hearings. Thus, to the extent that the appellants required 30 days to prepare their clients for the local hearings, such time was available. This is further support for the lack of undue prejudice or expense to one or more of the parties.
- (12) Accordingly, because the joint interlocutory appeal did not present a new or novel question of law or policy and is not taken from a ruling which represents a departure from past precedent and because an immediate determination by the Commission is not needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, the attorney examiner finds that the joint interlocutory appeal should not be certified to the Commission for review.

It is, therefore,

ORDERED, That the appellants' joint request for certification be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

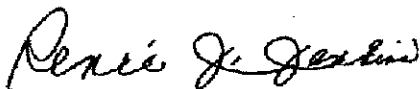


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Renee J. Jenkins
Secretary