

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 08-1301-EL-AAM
Ohio Power Company for Authority)
to Modify Their Accounting Procedure)
for Certain Storm-Related Service)
Restoration Costs.)

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APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the 1.2 million residential customers of the Columbus Southern Power Company and Ohio Power Company (collectively "Companies" or "AEP Ohio") and pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A), applies for rehearing of the Finding and Order ("Order") issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on December 19, 2008, in the above-captioned case. The Order approved the application filed by AEP Ohio on December 15, 2008 ("Application") requesting authority to modify its accounting procedures in order to defer incremental operation and maintenance ("O&M") costs, including carrying costs, related to the September 14, 2008, wind storm restoration efforts. The approval of the Application by this Commission was unjust, unreasonable and unlawful and the Commission erred in the following particulars:

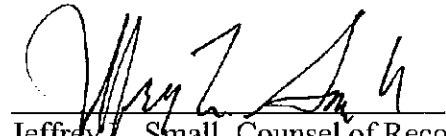
THE COMMISSION ERRED WHEN IT FAILED TO ORDER THAT THE REASONABLENESS AND LAWFULNESS OF THE DEFERRED AMOUNTS AND ANY COLLECTION THEREOF FROM CUSTOMERS WILL BE EXAMINED AND ADDRESSED IN A FUTURE RATE CASE UNDER R.C. 4909.18, 4909.15, AND RELATED STATUTES.

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The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 15, 2008, AEP Ohio filed its Application with the PUCO for authority “to defer as regulatory assets the portion of their respective Operation and Maintenance (O&M) expenses associated with restoring electric service to their customers in the aftermath of Hurricane Ike’s destructive wind storm on September 14, 2008.”¹ AEP Ohio proposed to defer the O&M expenses for future recovery from all customers, including 1.2 million residential customers, over a twelve-month period to be determined in a future PUCO proceeding or beginning with the first billing cycle of January 2011, whichever date occurs first.²

On December 19, 2008, four days after the Application was filed, the Commission issued an Order that approved the Application with modifications.

¹ Application at 1.

² Id.

II. ARGUMENT: THE COMMISSION ERRED WHEN IT FAILED TO ORDER THAT THE REASONABLENESS AND LAWFULNESS OF THE DEFERRED AMOUNTS AND ANY COLLECTION THEREOF FROM CUSTOMERS WILL BE EXAMINED AND ADDRESSED IN A FUTURE RATE CASE UNDER R.C. 4909.18, 4909.15, AND RELATED STATUTES.

The proper mechanism for AEP Ohio to seek an increase in its distribution rates due to increased O&M expenses is the filing of an application pursuant to R.C. 4909.18 that would be subject to review according to the rate setting procedures set out in R.C. Chapter 4909. The Commission erred when it simply stated that “the reasonableness of the deferred amounts and the recovery thereof will be examined and addressed in a future proceeding before the Commission.”³ On rehearing, the Commission should find (or clarify) that the reasonableness and lawfulness of the deferred amounts, and any recovery thereof from customers, will be examined and addressed in a future rate case proceeding under 4909.18, 4909.15 and related statutes before the Commission.

A diligent review of any deferred amounts in O&M expenses,⁴ conducted in an appropriate procedural context, is essential to protect customers from paying unreasonable rates for their electric distribution service. The Commission recently approved rate increases in connection with O&M distribution deferrals that were proposed by the FirstEnergy electric distribution utilities.⁵ Those rate increases were inappropriately approved in an electric security plan (“ESP”) case without a detailed

³ Order at 4.

⁴ Such a review is addressed, in part, by the OCC’s filings in Case No. 08-1299-EL-UNC.

⁵ *In re FirstEnergy ESP Case*, Case Nos. 08-935-EL-SSO, et al., Order at 58 (December 19, 2008). The Commission Staff recommended that the deferrals be addressed in the context of distribution rate cases. *Id.* The FirstEnergy electric distribution utilities later withdrew their application such that the Commission-approved distribution rate increases were not implemented. *Id.*, FirstEnergy Letter (December 22, 2008).

examination. An earlier Commission order promised an examination of the O&M deferrals within the context of FirstEnergy's expenditure levels and whether distribution rates covered those levels of expenditures.⁶ A future ESP case under R.C. 4928.143 would not be an appropriate proceeding to consider AEP Ohio's windstorm O&M deferrals. Fundamental to an ESP case is a utility proposal to provide generation service,⁷ and no ESP proposal by AEP can propose generation service in connection with distribution expenditures that took place during 2008.

Only a distribution rate case can provide an appropriate procedural setting for considering any recovery of AEP Ohio's proposed windstorm deferrals. While the Commission cited in its Order a decision of the Supreme Court of Ohio for the proposition that "deferrals do not constitute ratemaking,"⁸ the Court stated in the same decision that any recovery of the deferrals from customers would be considered in a rate case.⁹ Within the appropriate procedural setting of a rate case, the Commission Staff should carefully investigate AEP Ohio's windstorm expenditures and make recommendations in its staff reports. The Commission should so state in its Entry on Rehearing.

⁶ See, e.g., *In re FirstEnergy Distribution Rate Case*, Case Nos. 07-551-EL-AIR, et al., OCC Initial Post-Hearing Brief at 15-16 (March 28, 2008), citing *FirstEnergy RCP Case*, Case Nos. 05-1125-EL-ATA, et al., Order at 8-9 (January 4, 2006).

⁷ R.C. 4928.143(B).

⁸ Order at 4.

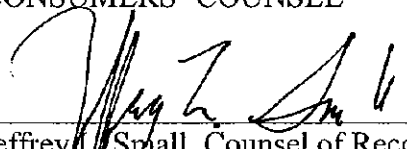
⁹ *Elyria Foundry Co. v. Public Util. Comm.*, 114 Ohio St. 3d 305, 309, 2007-Ohio-4164 at ¶22.

III. CONCLUSION

The Commission should grant rehearing in this case because AEP Ohio has no authority to seek recovery of storm-related expenses through an increase in the distribution rates that residential consumers pay unless there is compliance with the protections of Ohio's rate-making statutes. On rehearing, the Commission should make determinations consistent with the OCC's arguments on behalf of AEP Ohio's 1.2 million residential customers.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

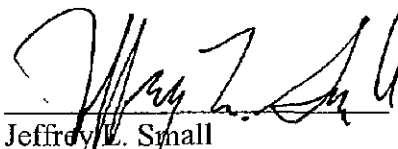


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing by the Office of the Ohio Consumers' Counsel* was served via Regular U.S. Mail Service, postage prepaid, to the persons listed below, this 20th day of January, 2009.



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