

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Columbus Southern Power ) Case No. 10-155-EL-RDR  
Company and Ohio Power )  
Company to Establish )  
Environmental Investment Carrying )  
Cost Riders. )

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**REPLY TO AEP'S MEMORANDUM CONTRA  
OCC'S MOTION FOR A PROCEDURAL RULING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

On February 8, 2010, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "AEP" or the "Company") filed an application ("Application") regarding the establishment of carrying cost riders associated with AEP's environmental investments during its three-year electric security plan. Over an 18-month period, AEP proposes to collect \$29,277,000 from CSP customers<sup>1</sup> and \$36,635,000 from OPC customers.<sup>2</sup> If the Public Utilities Commission of Ohio ("PUCO" or "Commission") approves the new riders as requested by AEP, approximately 1.2 million residential distribution customers who pay for electric service could be adversely affected.

On February 23, 2010, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, filed a Motion to Intervene and a Motion for a

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<sup>1</sup> See Application at ¶ 8 and CSP Schedule 1.

<sup>2</sup> Id. at OPC Schedule 1.

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Procedural Ruling (“Procedural Motion”) in this case. OCC sought a procedural ruling that includes provision for protests and a hearing on disputed matters, as well as an expedited discovery schedule.<sup>3</sup>

On March 3, 2010, AEP filed a memorandum contra OCC’s Motion for a Procedural Ruling.<sup>4</sup> AEP does not object to the Commission issuing a procedural ruling setting forth a process to follow in this case.<sup>5</sup> The Company, however, opposes the recommendation that a formal hearing may be necessary.<sup>6</sup> AEP also opposes OCC’s request for expedited discovery.<sup>7</sup> AEP, however, is wrong.

As discussed in this reply, a procedural ruling should not restrict the Commission’s consideration of this important case to the limitations of a so-called “paper hearing,”<sup>8</sup> as AEP would have it. Instead, as OCC suggested, the Commission should leave open the possibility of a true hearing for issues that remain in dispute after the submission of any PUCO staff report, the filing of protests and the discovery process.<sup>9</sup> In addition, because the Company is asking the Commission to act so that the new riders may take effect with the first billing cycle of 2010,<sup>10</sup> there is a need to expedite discovery responses regardless of when discovery is first served. The Commission should thus grant OCC’s Procedural Motion.

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<sup>3</sup> Procedural Motion at 4-6.

<sup>4</sup> AEP did not oppose OCC’s Motion to Intervene. Memorandum Contra at 1.

<sup>5</sup> Id.

<sup>6</sup> Id. at 1-2.

<sup>7</sup> Id. at 2-3.

<sup>8</sup> Id. at 2.

<sup>9</sup> See Procedural Motion at 4-6.

<sup>10</sup> Application at ¶ 10.

## II. ARGUMENT

### A. The Commission Should Not Preclude the Opportunity for a Formal Hearing in This Proceeding.

In the Procedural Motion, OCC noted that the “comment and reply comment” process proposed by AEP limits participation by interested parties.<sup>11</sup> OCC recommended the following:

A schedule should be issued that permits interested parties the opportunity to protest those aspects of the Company’s proposal that remain outstanding after completing discovery. A hearing should be provided to assist the Commission in resolving disputed matters. If no such protests arise or if any protests are otherwise resolved before the date set for hearing, the hearing will likely not be necessary.<sup>12</sup>

Unlike AEP’s proposed process, OCC’s proposal provides an opportunity for written protests and leaves open the *possibility* of a formal hearing.

AEP asserts that a formal hearing in this proceeding is not necessary.<sup>13</sup> Reliance on the process that AEP proposes, however, would not be prudent. AEP claims that “[t]he Companies have provided, as part of their application in the present case *substantial supporting data* regarding the calculation of each Company’s proposed rider.”<sup>14</sup> This is not true. The “substantial supporting data” consists of five schedules of calculations for each company, with no workpapers or other information to explain how the calculations were made. This is not the kind of information that can be properly addressed in AEP’s proposed process.

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<sup>11</sup> Procedural Motion at 4-5.

<sup>12</sup> Id. at 5-6.

<sup>13</sup> Memorandum Contra at 1.

<sup>14</sup> Id. at 2 (emphasis added).

A more substantive process is needed for this proceeding. In its memorandum contra, AEP stated, "The Companies believe that the Commission's Staff can and should analyze the data provided by the Companies and provide the Commission and intervenors with the results of its analysis."<sup>15</sup> OCC agrees that the PUCO Staff should provide a formal report. In addition, the Company should be required to submit written testimony explaining the data behind the calculations and the Company's conclusions. Intervenors should then have opportunity to file protests, which may include supporting testimony. At that point, the Commission should determine whether a formal hearing is necessary.

AEP states that "[t]he basis for establishing the riders sought by the Companies is found in the Companies' Electric Security Plan proceeding."<sup>16</sup> While that may be true, the calculations behind the riders have not been examined. The PUCO must still investigate and determine whether the alleged costs can be validated. This investigation should include the opportunity for the Commission and intervenors to cross-examine Company personnel regarding the calculations behind the proposed riders.

**B. Because AEP Is Seeking a Commission Decision in Order to Make the Riders Effective in Time for the July 2010 Billing Cycle, Expedited Discovery Is Necessary in This Proceeding.**

In the Procedural Motion, OCC asked that the Commission establish an expedited response time for answers to the discovery requests that parties are allowed to send under R.C. 4903.082.<sup>17</sup> OCC based its request on the need for the Commission to "determine rates by the July 2010 time frame discussed by the Company."<sup>18</sup>

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<sup>15</sup> Id.

<sup>16</sup> Id. at 1-2.

<sup>17</sup> Procedural Motion at 5.

<sup>18</sup> Id. citing Application at ¶ 10.

In response, AEP asserted that the timing of the Application does not justify OCC's request for a ten-day discovery response.<sup>19</sup> AEP is wrong.


AEP controlled the timing of its filing, and filed its Application less than five months before the July 2010 billing cycle. By the time a procedural entry is issued, there will be approximately three months remaining before the July 2010 billing cycle for the PUCO Staff to issue its report, for any additional filings to be made, for the Commission to make its decision and for the rehearing process to proceed. Given that filings will likely need to be made during April, an expedited discovery process is justified.

### III. CONCLUSION

AEP's arguments against OCC's Procedural Motion are flawed. The Commission should grant OCC's Motion for a Procedural Ruling, and issue a procedural ruling that includes expedited discovery and leaves open the possibility for a formal hearing in this proceeding.

Respectfully submitted,

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<sup>19</sup> Memorandum Contra at 2-3.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 15<sup>th</sup> day of March 2010.

  
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