

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Columbus Southern Power Company) Case No. 09-1089-EL-POR
for Approval of its Program Portfolio)
Plan and Request for Expedited)
Consideration)

In the Matter of the Application of)
Ohio Power Company for Approval) Case No. 09-1090-EL-POR
of its Program Portfolio Plan and)
Request for Expedited Consideration)

**AEP OHIO'S MEMO IN PARTIAL OPPOSITION TO MOTION FOR
LEAVE OF INDUSTRIAL ENERGY USERS – OHIO**

Industrial Energy Users – Ohio (IEU) filed a motion for leave to file a reply to the memorandum filed by Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively “AEP Ohio”) in opposition to IEU’s application for rehearing. IEU understood that it needed to get permission to submit a reply memorandum because there is no provision in the Commission’s procedural rules for filing a reply in support of an application for rehearing. IEU proceeded to file its reply memorandum *instanter* without seeking an expedited ruling or otherwise waiting on a ruling regarding its request.

While AEP Ohio does not oppose IEU’s request for permission to file a reply memorandum in Case No. 09-1089-EL-POR, AEP Ohio does oppose the request as it relates to Case No. 09-1090-EL-POR. This partial opposition is based on the fact that IEU— handling the docketing function directly itself through an electronic filing – simply did not properly file an application for rehearing in Case No. 09-1090-EL-POR. IEU’s reply does not contest the statement made in AEP Ohio’s memorandum in opposition to rehearing (which was supported by Exhibit B, the docket sheet for Case No. 09-1090-EL-POR) that the IEU application for

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rehearing was not filed in Case No. 09-1090-EL-POR. Based on that uncontested fact, the Commission lacks rehearing jurisdiction in Case No. 09-1090-EL-POR and there is no further “reply” argument to entertain in that case.

Because IEU filed its substantive arguments *instantly* and because AEP Ohio presumes that IEU will file an additional reply memorandum in support of its motion, AEP Ohio will also proceed to briefly address the substantive arguments raised in IEU’s motion. AEP Ohio stands by its assertion that electronic filing of an application for rehearing is not permitted under R.C. 4903.10 or the Commission’s rules and was not otherwise authorized by the Legal Director or Attorney Examiners presiding over these cases. While IEU’s reply spends considerable time addressing what AEP Ohio did not address (proof of service, harm, timeliness, etc.), the simple question presented is whether an application for rehearing may be electronically filed.

Rule 4901-1-02(A), OAC, provides that “[e]xcept as discussed in paragraph (B) of this rule, all applications, complaints, reports, pleadings, or other papers to be filed with the commission shall be mailed or delivered to the commission’s docketing division at that address, together with the number of copies required by paragraph (C) of this rule.” Except for the electronic facsimile exception found in paragraph (B) of the rule (inapplicable here), Rule 4901-1-02(A), OAC, is a rule of general application that requires paper filings, either hand-delivered or mailed, delivered to the docketing division. Rule 4901-1-35(E), OAC, reinforces the notion that an application for rehearing cannot be faxed (this provision is a corollary to Rule 4901-1-02(A) and makes sense because faxing is the only general exception to paper filing. Electronic filing of an application for rehearing is not provided for in the Commission’s rules.

IEU Relies on a passage from the Legal Director’s November 12, 2009 in Case No. 08-888-EL-ORD. But that passage does not serve to generally override the Commission’s

procedural rules, especially concerning the jurisdictional filing of an application for rehearing. As a related matter, that passage refers to "filings made pursuant to the new rules" under OAC Chapter 4901:1-39; the filing of an application for rehearing is not a new filing or procedure addressed in the newly-adopted rules. Thus, the passage does not apply or establish the propriety of filing an application for rehearing electronically.

CONCLUSION

Contrary to IEU's reply, filing an application for rehearing electronically is not an establish or accepted method under the Commission's rules. AEP Ohio believes this matter is an issue of first impression for the Commission to directly and clearly address.

Respectfully submitted,

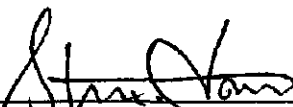


Steven T. Nourse, Trial Attorney
Matthew J. Satterwhite
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
Fax: (614) 716-2950
Email: stnourse@aep.com
mjsatterwhite@aep.com

Counsel for Columbus Southern Power Company
and Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy Columbus Southern Power Company's and Ohio Power Company's Memorandum in Opposition was served by U.S. Mail upon the individuals listed below this 29th day of June, 2010.


Steven T. Nourse

Terry Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, Ohio 43215

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291

Will Reisinger
The Ohio Environmental Council
1207 Grandview Ave Ste. 201
Columbus OH 43212-3449

David C. Rinebolt
Ohio Partners For Affordable Energy
231 West Lima St. PO Box 1793
Findlay OH 45839-1793

Henry Eckhart
Sierra Club, Columbus Chapter
National Resources Defense Council
131 North High Street
Suite 605
Columbus, OH 43215

Samuel C. Randazzo
McNees Wallace & Nuick
21 East State St, 17th Floor
Columbus OH 43215

Michael L. Kurtz
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

Thomas McNamee
Ohio Attorney General
180 East Broad Street, 6th Floor
Columbus, OH 43215

Richard I. Sites
Ohio Hospital Association
155 E. Broad Street 15th Floor
Columbus OH 43215-3620

Clinton A. Vince
Douglas G. Bonner
Daniel D. Barnowski
Emma F. Hand
Keith C. Nusbaum
Sonnenschein Nath & Rosenthal LLP
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005