

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

ENTRY ON REHEARING

The Commission finds:

- (1) On November 12, 2009, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or the Companies) filed an application in the above-captioned matters for approval of the Companies' energy efficiency and peak demand reduction (EE/PDR) program portfolio plans for 2010 through 2012, pursuant to Rule 4901:1-39-04, Ohio Administrative Code (O.A.C.). Along with the application, AEP-Ohio also filed a Stipulation and Recommendation (Stipulation), signed by the Office of the Ohio Consumers' Counsel (OCC), Ohio Manufacturers' Association (OMA), Ohio Environmental Council (OEC), Ohio Partners for Affordable Energy (OPAE), Sierra Club of Ohio (Sierra), Natural Resources Defense Council (NRDC), Ohio Energy Group (OEG), Ohio Poverty Law Center, Ohio Hospital Association (OHA), and the Companies, addressing all of the issues raised in the application. AEP-Ohio also filed the direct testimony of Jon F. Williams (Cos. Ex. 1) and the direct testimony of David M. Roush (Cos. Ex. 2) in support of its application and the Stipulation (Joint Ex. 1) on November 12, 2009. Pursuant to a letter filed December 10, 2009, by Ormet Primary Aluminum Corporation (Ormet), Ormet was included as a signatory party to the Stipulation.
- (2) CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

- (3) IEU-Ohio filed objections and recommendations to AEP-Ohio's application.
- (4) Motions to intervene were filed by and the granted to the following entities: Ormet, IEU-Ohio, OP&A, Sierra, O&E, O&H, O&M, O&C, O&R, NRDC and EnerNOC, Inc. (EnerNOC).
- (5) A hearing took place on February 25, 2010. AEP-Ohio presented two witnesses, Jon F. Williams (Cos. Ex. 1) and David M. Roush (Cos. Ex. 2), in support of its application and the Stipulation (Joint Ex. 1). IEU-Ohio presented one witness, Kevin M. Murray (IEU-Ohio Ex. 1). Initial briefs were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC, O&E, Sierra, and NRDC, on March 10, 2010. Reply briefs were filed by AEP-Ohio and IEU-Ohio on March 19, 2010.
- (6) On May 13, 2010, the Commission issued its Opinion and Order (Order) approving the Stipulation filed by the majority of the parties to the proceedings, with two modifications. The Commission's first modification to the Stipulation related to the calculation of lost revenue and AEP-Ohio's opportunity to earn a fair and reasonable return (Order at 26). The Commission's second modification to the Stipulation concerned the calculation of a mercantile customer's rider exemption under the benchmark comparison method (Order at 27).
- (7) On May 21, 2010, the Companies filed revised tariffs in these cases. By Finding and Order issued May 26, 2010, the Commission approved the Companies' application to amend their tariffs.
- (8) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal.
- (9) On June 14, 2010, IEU-Ohio electronically filed an application for rehearing. Although the document caption included both Case Nos. 09-1089-EL-POR and 09-1090-EL-POR, IEU-Ohio electronically filed its application only in Case No. 09-1089-EL-POR. In its application for rehearing, IEU-Ohio argues that the Order is unreasonable and unlawful in four respects:

- (a) The Commission's Order authorizing AEP-Ohio to recover lost distribution revenue through January 1, 2011 is unreasonable, unlawful, and contrary to the record evidence.
  - (b) The Commission's Order approving the Stipulation without considering the overall rate impacts on customers is unreasonable and unlawful.
  - (c) The Commission's Order approving cost recovery for AEP-Ohio's peak demand reduction proposal is unreasonable, unlawful, and contrary to the record evidence.
  - (d) The Commission's Order prohibiting AEP-Ohio and mercantile customers from relying on the "benchmark comparison method" for agreements reached after December 10, 2009 is unreasonable and unlawful.
- (10) On June 23, 2010, AEP-Ohio filed a memorandum contra IEU-Ohio's application for rehearing. In addition to responding to IEU-Ohio's assignments of error, AEP-Ohio argues that IEU-Ohio improperly electronically filed its application for rehearing and failed to file, as indicated by the heading, an application for rehearing, electronically or otherwise, in docket 09-1090-EL-POR by the due date.
- (11) In response, on June 24, 2010, IEU-Ohio filed a motion for leave to file a reply, memorandum in support, and reply addressing AEP-Ohio's request to dismiss the application for rehearing for improperly electronically filing the application. IEU-Ohio's motion for leave to file shall be granted. Among other arguments, IEU-Ohio contends that by entry issued November 12, 2009, in Case No. 08-888-EL-ORD wherein the Commission considered new rules to address energy efficiency and alternative energy resources, renewable energy credits, clean coal technology, and environmental regulations embodied in Amended Substitute Senate Bill 221, the legal director established the POR purpose code and stated that all "applications, reports, and filings made pursuant to the new rules using these purpose codes [including "POR" cases]

should be filed electronically...." AEP-Ohio filed a memorandum in partial opposition to IEU-Ohio's motion for leave on June 29, 2010. AEP-Ohio does not oppose IEU-Ohio's motion as it relates to Case No. 09-1089-EL-POR but, because IEU-Ohio failed to file an application for rehearing in Case No. 09-1090-EL-POR, AEP-Ohio does oppose the filing in that case. With regard to Case No. 09-1089-EL-POR, AEP-Ohio contends that the November 12, 2009, entry in Case No. 08-888-EL-ORD does not override the Commission's procedural rules. IEU-Ohio filed a reply on July 7, 2010, in which it argues that electronic filing of an application for rehearing is not prohibited by the Commission's rules but, even if it is, the Commission may waive its rule and allow the electronic filing of IEU-Ohio's application for rehearing.

- (12) The Commission finds that the legal director's November 12, 2009, entry in Case No. 08-888-EL-ORD authorized the electronic filing of all applications, reports and filings in POR cases. An application for rehearing is a "filing" and, therefore, we cannot find that IEU-Ohio erred by electronically filing an application for rehearing in a POR case. We will consider the application for rehearing filed by IEU-Ohio in Case No. 09-1089-EL-POR. However, the party making an electronic filing controls in which case or cases the party will file its document, i.e., the Commission's electronic filing process requires the filer to select or input the case number(s) in which the document is to be filed. In this situation, IEU-Ohio did not select or input Case No. 09-1090-EL-POR and, therefore, the filing of its application for rehearing did not occur in Case No. 09-1090-EL-POR. As a result, there is no application for rehearing for the Commission to consider in 09-1090-EL-POR.
- (13) In its first assignment of error, IEU-Ohio argues that AEP-Ohio had the burden to demonstrate that its request for recovery of lost revenue was necessary. IEU-Ohio submits that AEP-Ohio, in fact, failed to present any evidence to support its claim for lost distribution revenue and a fair and reasonable return on used and useful distribution rate base. For this reason, IEU-Ohio contends that the Commission agreed with IEU-Ohio, but, nonetheless, approved the excessive and unreasonable amount requested based on the assumption that AEP-Ohio will experience lost distribution revenue when commercial and industrial customers reduce energy usage. According to IEU-

Ohio, the record demonstrates that energy efficiency of commercial and industrial customers will not result in foregone revenue for AEP-Ohio. In fact, IEU-Ohio notes that the Commission acknowledges the lack of evidence in support of the request for lost distribution revenue. The Order states:

However, in this instance, the Commission agrees with IEU-Ohio that the record fails to establish what revenue is necessary to provide AEP-Ohio with the opportunity to recover its costs and to earn a fair and reasonable return. Without this information, the Commission cannot determine whether the Signatory Parties' proposal included in Section F of the Stipulation is reasonable. Given that CSP's last distribution rate case occurred in 1991 and OP's last distribution rate case occurred in 1994, AEP-Ohio's actual costs of service are unknown at this time.

IEU-Ohio argues that despite this language, the Commission authorized AEP-Ohio to recover lost distribution revenue through January 1, 2011. IEU-Ohio contends that AEP-Ohio's collection of lost distribution revenue violates Section 4928.66(D), Revised Code and Rule 4901:1-39-07, Ohio Administrative Code (O.A.C.), and requests that the Commission grant rehearing and prohibit AEP-Ohio from recovering lost distribution revenue through its Energy Efficiency and Peak Demand Reduction (EE/PDR) rider. (IEU-Ohio App. at 4-6.)

- (14) AEP-Ohio responds that IEU-Ohio mischaracterizes the Order and the Stipulation. AEP-Ohio submits that, through the Order, the Commission specifically recognized the following: (a) Section 4928.66, Revised Code, provides statutory authority to support the Stipulation's distribution lost revenue mechanism; (b) Rule 4901:1-39-07(A), O.A.C., expresses the Commission's decision to permit distribution lost revenue mechanisms in the context of adopting a program portfolio plan and leaves it to the Commission's discretion as to what is an appropriate mechanism, with the guiding principle that it is important to break or weaken the link between sales volume and recovery of fixed service costs; and (c) the Commission recognized that the Signatory Parties, who had diverse

interests, negotiated and bargained for the provisions of the Stipulation, including the lost distribution revenue mechanism, and found it to be reasonable. AEP-Ohio asserts that the third finding is particularly appropriate under the three-part test governing the decision to adopt the Stipulation, given that, pursuant to the test, a challenger must demonstrate that the Stipulation "as a package" does not benefit ratepayers and, taken as a whole, does not benefit customers nor the public interest. With this backdrop, AEP-Ohio argues that IEU-Ohio mischaracterizes the Order. AEP-Ohio submits that the Commission may wish to clarify the Order accordingly on rehearing. (AEP-Ohio Memo Contra at 2-4.)

- (15) We find that IEU-Ohio's arguments misinterpret the Order. Although the Commission would have required more information to find that AEP-Ohio had met its burden of proof on a lost distribution revenue recovery mechanism in a litigated case, in this instance, we recognize that it is a key provision of the Stipulation. The lost distribution revenue recovery provision of the Stipulation was negotiated and agreed to by the Companies and numerous interested stakeholders, including representatives of residential, commercial and industrial customers. As such, we find it appropriate to deny IEU-Ohio's request for rehearing.
- (16) In its second assignment of error, IEU-Ohio argues that the Commission cannot approve a portfolio plan without considering the total rate impact on customers and, further, argues that the Commission failed to adequately consider the total rate impact of the portfolio plan Stipulation on AEP-Ohio customers in this case. IEU-Ohio interprets Section 4928.66(A)(2)(b), Revised Code, to grant the Commission the discretion to amend an electric distribution utility's EE/PDR plans for regulatory, economic, or technological reasons beyond the utility's control. IEU-Ohio also notes that Section 4928.02, Revised Code, expresses the state policy to ensure consumers adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. IEU-Ohio asks the Commission to utilize its discretion, in conjunction with the state's enunciated policy to consider the overall rate impact of recent rate increases on AEP-Ohio customers. IEU-Ohio notes that under similar circumstances, the Virginia State Corporation Commission (VSCC) recently denied AEP-Ohio

affiliate Appalachian Power Company's (APCo) application for approval of three purchase power agreements as part of its participation in Virginia's renewable energy portfolio standards program as being too costly for the company's customers. IEU-Ohio notes that, CSP and OP customers have incurred two rate increases in their electric bills since January 2010, totaling, on average, a 16.5270 percent increase for CSP customers and, on average, an increase of 15.33091 percent for OP customers. (IEU-Ohio App. at 7-12.)

IEU-Ohio asserts that there is no indication that the Commission considered the rate impact on customers in its decision and, therefore, IEU-Ohio reasons that the Commission failed to ensure AEP-Ohio customers reasonably priced electric service pursuant to Section 4928.02, Revised Code. IEU-Ohio requests that the Commission grant rehearing and find the Stipulation is not in the public interest as a result of the total electric security plan (ESP) rate impact to customers. (IEU-Ohio App. at 11-12.)

- (17) In response, AEP-Ohio states that IEU-Ohio's arguments merely repeat IEU-Ohio's claims it advances in its testimony and on brief. Nonetheless, AEP-Ohio asserts that IEU-Ohio's premise is flawed, as the Commission considered the rate impacts associated with the Stipulation and found the rates to be lawful and reasonable. AEP-Ohio notes that Section 4928.66(A)(2)(b), Revised Code, applies only when an electric distribution utility files an application requesting an amendment. AEP-Ohio notes that it did request an amendment of the 2009 PDR benchmark under Section 4928.66(A)(2)(b), Revised Code, by initiating Case Nos. 09-578-EL-EEC and 09-579-EL-EEC. While the 2009 PDR benchmark was reduced to zero as part of the Stipulation, the Companies argue that they reserved their right to reinstate funding (in Paragraph VI. 1), should that amendment be denied. AEP-Ohio additionally argues that IEU-Ohio's reliance on Section 4928.66(A)(2)(b), Revised Code, does not apply in this case and that the statute does not support IEU-Ohio's position that the Commission should unilaterally further amend AEP-Ohio's EE/PDR benchmarks on rehearing. (AEP-Ohio Memo Contra at 4-8.)

Further, AEP-Ohio argues that IEU-Ohio's reliance on the VSCC's decision is inappropriate, given that the VSCC's decision is based on the specific circumstances and distinguishing factors of that proceeding. AEP-Ohio notes that it has a statutory obligation to achieve EE/PDR benchmarks, whereas APCo, under Virginia law, has a voluntary renewable energy portfolio standard. Accordingly, AEP-Ohio reasons that VSCC's decision is not persuasive authority for IEU-Ohio's position in this case. In regard to the overall rate impact, the Companies note that the rate increases to which IEU-Ohio alludes were approved as a part of AEP-Ohio's ESP cases, including the EE/PDR rider. Furthermore, AEP-Ohio argues that the Commission has already explicitly determined that the EE/PDR rider rates exist outside of the rate caps established in the ESP cases<sup>1</sup> and, as such, are not limited by the existence of those separate rate increases. In AEP-Ohio's opinion, to allow the rate increases in this case to be affected by the rate caps in the modified and approved ESP case, as IEU-Ohio advocates, would directly undermine the Commission's determination that the EE/PDR riders are outside of the percentage cap increases on total customer bills. AEP-Ohio indicates that the time to challenge the Commission's decision on the entry on rehearing in the ESP case has passed and, in fact, is being currently pursued by IEU-Ohio. (AEP-Ohio Memo Contra at 4-8.)

- (18) IEU-Ohio's request for rehearing of this issue is denied. The Commission is mindful of the rate impact of this case on AEP-Ohio's customers. We recognize the fact that most of the parties were able to reach an agreement to avoid extensive litigation and the associated additional expense thereof. We are also mindful that limiting AEP-Ohio's ability to pursue cost-effective energy efficiency and peak demand reduction would necessitate the Companies' relying on more costly programs. Furthermore, the Commission notes that it has already determined, through an extensive process, that the EE/PDR rider rates are outside of the ESP rate caps. The issue

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<sup>1</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan Including Related Accounting Authority; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets; and In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan Including Related Accounting Authority; and an Amendment to its Corporate Separation Plan*, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, Entry on Rehearing at 31 (July 23, 2009).



before the Commission in this case is whether to approve the EE/PDR rider and the associated cost-effective energy efficiency and peak demand reduction programs. Approving these cost-effective programs ensures the lowest costs for Ohio industrial energy users and consumers. Accordingly, the Commission finds IEU-Ohio's arguments to be without merit.

- (19) In its third assignment of error, IEU-Ohio argues that the Order unreasonably, unlawfully, and contrary to the record evidence takes into account that AEP-Ohio filed an application for approval of a new PDR program which is not part of the record in this case.<sup>2</sup> Further, IEU-Ohio asserts that the Commission appears to approve, without justification, AEP-Ohio's request for recovery of approximately \$7 million with the expansion of AEP-Ohio's schedule IRP. IEU-Ohio argues that the Commission has failed to make a decision on AEP-Ohio customers' participation in the PJM demand response program in the ESP cases, or to make a decision on the issue otherwise, in order to facilitate mercantile customer-sited PDR capabilities in PJM programs to comply with PDR benchmarks, and that the Commission's failure to act has caused uncertainty, unpredictability, and increased expense to Ohio customers and AEP-Ohio. IEU-Ohio argues that AEP-Ohio did not meet its burden of demonstrating that its PDR program proposal is reasonable, in the public interest or cost-effective, or that its PDR plan is least cost (Tr. at 45-46). Accordingly, IEU-Ohio argues the Commission should reverse its authorization to recover approximately \$7 million unless and until the Commission approves a PDR plan. (IEU-Ohio App. at 13-16.)
- (20) In response to IEU-Ohio's contentions, AEP-Ohio asserts that IEU-Ohio's arguments are not substantively different than the arguments made in its testimony and on brief. Accordingly, AEP-Ohio contends that IEU-Ohio's arguments should again be rejected by the Commission. AEP-Ohio notes that the Commission specifically found that, based on its review of the record, the energy efficiency programs in AEP-Ohio's plans were on par with those of the other electric utilities (AEP-Ohio Memo Contra at 8-11).

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<sup>2</sup> *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company to Amend their Emergency Curtailment Service Riders*, Case Nos. 10-343-EL-ATA and 10-344-EL-ATA.

- (21) We previously found in our Order that IEU-Ohio's analysis of AEP-Ohio's action plan and its comparison of AEP-Ohio's energy efficiency programs to those of other utilities were not sufficiently detailed to convince us that the costs of AEP-Ohio's programs are excessive for the benefits derived therefrom. IEU-Ohio's arguments in its application for rehearing simply reiterate the arguments it advanced at hearing and in its briefs. As stated above, we have already passed upon these arguments. As IEU-Ohio has raised no new arguments regarding these issues, we find that its assignment of error should be denied.
- (22) In its last assignment of error, IEU-Ohio notes that AEP-Ohio's application and the Stipulation included two options by which the Companies' mercantile customers can commit self-directed projects to AEP-Ohio's portfolio program. As a result of committing such projects, the Companies' mercantile customers may receive either of the following:
- (a) a reduced upfront payment from AEP-Ohio equivalent to a portion of the customer's EE/PDR rider cost obligation, with the customer continuing to pay the rider; or,
  - (b) an exemption from the EE/PDR rider if the customer's committed energy savings equal AEP-Ohio's mandated benchmark requirement percentages of energy savings based upon the customer's 2006-2008 average annual energy usage baselines.

(Stipulation at 12-13). IEU-Ohio argues that the Commission unilaterally eliminated Option (b), which all the parties supported, causing confusion about the way in which rider exemptions for mercantile customers will be evaluated and over what period of time mercantile customers should qualify for an exemption from the EE/PDR rider. IEU-Ohio requests that the Commission grant rehearing to clarify the criteria to be used to calculate the time period that a mercantile customer may qualify for an exemption from the rider. (IEU-Ohio App. at 16-19.)

- (23) AEP-Ohio makes no direct arguments in opposition to IEU-Ohio's last assignment of error. However, AEP-Ohio concludes by requesting that the Commission reject IEU-Ohio's application for rehearing.
- (24) The Commission's rules adopted in *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928.66, Revised Code, as Amended by Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD (Green Rules), initially included the benchmark comparison method reflected in Option 2 of the Stipulation. However, as the Commission explained in the Order, prior to the filing of the application and the Stipulation, we rejected the benchmark comparison method as a way of determining the mercantile customer rider exemption.<sup>3</sup> Because Rule 4901:1-39-08, O.A.C., was not effective until December 10, 2009, the Commission accepted use of the benchmark comparison method until that time. As explained in the Order, we find it appropriate to amend the Stipulation in the same manner and, therefore, deny IEU-Ohio's request for rehearing on this matter.
- (25) Additionally, it is important to note that the Commission has recently directed Staff to develop a standard application template in order to assist the Commission in expediting the approval process for such mercantile applications for special arrangements with electric utilities and exemptions from energy efficiency and peak demand reduction riders. Accordingly, in the near future, the Commission will publish an application and filing instructions for such applications. The Commission also intends to streamline the approval of certain types of applications via an auto-approval process. Case No. 10-834-EL-EEC has been opened for this purpose. Thus, the exemption period will vary for each mercantile customer based upon the customer's investment. Accordingly, IEU-Ohio's request for rehearing is denied.

It is, therefore,

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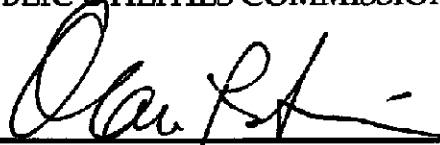
<sup>3</sup> See Green Rules, Entry on Rehearing at 13-14 (October 15, 2009).

ORDERED, That IEU-Ohio's application for rehearing in Case No. 09-1089-EL-POR be denied. It is, further,

ORDERED, That AEP-Ohio's request to dismiss the application for rehearing in Case No. 09-1089-EL-POR is denied. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon each party of record in these cases and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



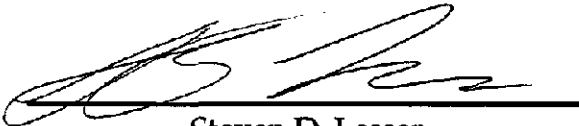
Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser

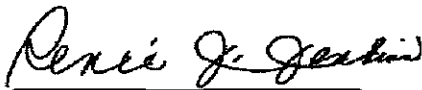


Cheryl L. Roberto

GNS/RLH/RMB/vrm

Entered in the Journal

**JUL 14 2010**



Renee J. Jenkins  
Secretary