

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 10-164-EL-RDR
to Update its gridSMART Rider.)

FINDING AND ORDER

The Commission finds:

On March 18, 2009, the Commission issued its opinion and order in Columbus Southern Power Company's (CSP) and Ohio Power Company's (OP) (jointly, AEP-Ohio or the Companies) electric security plan (ESP) cases (ESP Order).¹ By entries on rehearing issued July 23, 2009 (First ESP EOR) and November 4, 2009 (Second ESP EOR), the Commission affirmed and clarified certain issues raised in AEP-Ohio's ESP Order. As ultimately modified and adopted by the Commission, CSP's ESP directed that CSP create the gridSMART rider.²

On February 11, 2010, CSP filed, in Case No. 10-164-EL-RDR (gridSMART case), its application to update its gridSMART rider. CSP explains that, as directed by the Commission in the ESP cases, it pursued, and has been awarded, funding through the American Reinvestment Recovery Act (ARRA) from the United States Department of Energy (USDOE). As presented in the ESP cases, gridSMART consist of advanced meter infrastructure (AMI), home area network (HAN) and distribution automation (DA).³ CSP claims that ARRA funding further required enhancement of the gridSMART plan presented to the Commission in the ESP cases to include real-time pricing, community energy storage, smart appliances, cyber security operation center, and plug-in electric vehicle components at an additional cost of approximately \$41 million. CSP states that it secured in-kind contributions from non-affiliated corporate partners to enhance its gridSMART plan, and the cost of the additional work and components will not be collected through the gridSMART rider. CSP states that it expects to avoid increasing the 2009-2011 revenue requirement for gridSMART Phase I. In other words, CSP expects to maintain approximately the same level of ratepayer funding during this ESP period. CSP states that in the ESP case, the Commission approved CSP's initial gridSMART rider at \$32 million, subject to annual reconciliation, based on the Companies' prudently incurred costs and receipt of ARRA grant funding. CSP acknowledges that it suspended its gridSMART spending in 2009 because, under the

¹ In re AEP-Ohio ESP cases, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, Opinion and Order (March 18, 2009).

² In re AEP-Ohio ESP Order at 34-38; First ESP EOR at 18-24.

³ In re ESP cases, Order at 34 (March 18, 2009).

ARRA process, expenditures incurred more than 90 days prior to USDOE award notification are not eligible for matching funds. Based in part on the company's suspension of gridSMART expenditures, CSP over-recovered its gridSMART costs via the gridSMART rider for 2009. CSP states that it has resumed its gridSMART expenditures and expects to incorporate the "delayed" investments in 2010. CSP requests that the company's gridSMART rider be updated to 2.30342 percent for actual gridSMART Phase I investments, a decrease from the current rate of 2.55030 percent. CSP requests that the gridSMART rider rates commence with the first billing cycle in July 2010, to coincide with the effective date of the fuel adjustment clause (FAC) adjustment, as any increase associated with the gridSMART rider and FAC rates are limited by the rate caps established in the ESP cases.⁴

By entry issued April 8, 2010, a procedural schedule in this matter and two other AEP-Ohio rider proceedings was established. In the April 8, 2010 entry, interested persons were directed to file comments to this or two other rider applications by April 30, 2010. Reply comments were due by May 10, 2010. The Office of the Ohio Consumers' Counsel (OCC), the Industrial Energy Users-Ohio (IEU-Ohio), and Ohio Partners for Affordable Energy (OPAE) filed motions to intervene in the gridSMART case. The April 8, 2010 entry also granted OCC's, IEU-Ohio's and OPAE's motions to intervene in the gridSMART case. Further, the entry admitted David C. Rinebolt to practice *pro hac vice* before the Commission in the gridSMART case.

On July 21, 2010, CSP filed a letter and updated exhibits to the gridSMART application. In the letter, CSP agrees to certain Staff recommendations, as noted below, and requests that the updated gridSMART rider be adopted (CSP letter).

On August 9, 2010, OCC filed reply comments to CSP's July 21, 2010 letter (Second OCC Reply Comments), to which CSP filed reply comments on August 10, 2010 (Second CSP Response). In these comments, OCC makes some arguments regarding time of use rates. The Commission finds that OCC's comments regarding time of use rates, and CSP replies thereto are more appropriately addressed in other Commission proceedings for gridSMART service offerings and will not be further discussed in this case.

⁴ On a total bill basis, rate increases are capped at 7 percent for CSP and 8 percent for OP in 2009, 6 percent for CSP and 7 percent for OP in 2010, and 6 percent for CSP and 8 percent for OP in 2011. ESP Order at 22; First ESP EOR at 8-9.

A. IEU-Ohio's General Comments to AEP-Ohio Rider Cases⁵

In its comments to the gridSMART case, IEU-Ohio argues that the Commission lacks subject matter jurisdiction. IEU-Ohio asserts that the Commission lost jurisdiction over AEP-Ohio's ESP, and all proceedings stemming from the ESP, including these rider proceedings, when the Commission failed to issue an order within 150 days of AEP-Ohio filing its ESP application. (IEU-Ohio Comments at 7-9; IEU-Ohio Reply at 2-3.) IEU-Ohio also argues that AEP-Ohio must accept the modified ESP and withdraw its appeal of the modified ESP (IEU-Ohio Comments at 9-12).

IEU-Ohio has raised these issues in other Commission proceedings and in each case the Commission has rejected both arguments.⁶ IEU-Ohio has raised no new arguments in this proceeding that the Commission has not previously considered in other cases and rejected. Accordingly, for the same reasons as stated in previous cases where the issues have been raised, the Commission again rejects IEU-Ohio's arguments. However, the Commission will provide further explanation as to why IEU-Ohio's jurisdictional argument is without merit.

The Commission did not lose jurisdiction over the ESP application after 150 days. The 150-day period specified in Section 4928.143(C)(1), Revised Code, does not limit the Commission's jurisdiction. The general rule is that "a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure." *Hardy v. Delaware Cty. Bd. Of Revision*, 106 Ohio St. 3d 359, 363, 835 N.E.2d 348, 353 (2005), quoting *State ex rel. Jones v. Farrar*, 146 Ohio St. 467, 66 N.E.2d 531, ¶ 3 of the syllabus (1946). As the Court has explained:

Statutes which relate to the manner or time in which power or jurisdiction vested in a public officer is to be exercised, and not to the limits of the power or jurisdiction itself, may be construed to be directory, unless accompanied by negative words importing that the act required shall not

⁵ IEU-Ohio filed the same comments to AEP-Ohio's rider applications in *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Rider*, Case No. 10-155-EL-RDR and *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Update Each Company's Enhanced Service Reliability Rider*, Case No. 10-163-EL-RDR.

⁶ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Pursuant to Rule 4901:1-38-08(A)(5)*, Ohio Administrative Code, Case No. 10-154-EL-RDR, Entry on Rehearing at 3-4 (May 19, 2010); *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC, et al., Entry on Rehearing (March 24, 2010).

be done in any other manner or time than that designated. *Schick v. Cincinnati*, 116 Ohio St. 16, 155 N.E. 555, ¶ 1 of the syllabus (1927).

The Court has repeatedly held that a tribunal does not lose jurisdiction for failing to act within a prescribed time absent an express intent to restrict jurisdiction for untimeliness. See, e.g. *In re Davis*, 84 Ohio St. 3d 520, 705 N.E.2d 1219 (1999); *State v. Bellman*, 86 Ohio St. 3d 208, 714 N.E.2d 381 (1999). There is no such expression of intent in Section 4928.143(C)(1), Revised Code, or elsewhere in Amended Substitute Senate Bill 221 (SB 221). The statute expresses no purpose for the requirement that an application be approved within 150 days. Absent a discernable purpose in the text of the statute, the time for performance is viewed as directory, not mandatory, *State ex rel. Smith v. Barnell*, 109 Ohio St. 246, 142 N.E.2d 611 (1924). The Commission, thus, retained jurisdiction to act on the ESP application.

IEU-Ohio also urges the Commission to reconsider the modified ESP to evaluate whether the ESP meets the goals set forth in Section 4928.02, Revised Code (IEU-Ohio Comments at 5-6).

We reject IEU-Ohio's request to re-evaluate CSP's Commission-modified and approved ESP in light of the company's earnings. Pursuant to SB 221 the Commission will evaluate CSP's ESP, as well as that of other electric utilities, to determine whether the plan produces significantly excessive earnings for the electric utility determined in *In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to Amended Substitute Senate Bill 221 for Electric Utilities*, Case No. 09-786-EL-UNC, and, for this reason, we find it unnecessary to explore the issue in this case. We also find IEU-Ohio's request to reconsider whether CSP's ESP meets the goals of Section 4928.02, Revised Code, to be an untimely attempt to relitigate the Commission's decision in the ESP case.

B. Staff Audit Process

As a part of its investigation, Staff reviewed CSP's operations and maintenance (O&M) expenses and equipment purchase costs as well as the carrying charge rate. Staff requested detailed lists of capital and O&M costs, supporting documentation of a selected sample of such cost and reviewed the documentation until Staff was satisfied or determined an adjustment was warranted. Staff also determined the major equipment purchased in 2009 for the DA Integrated Volt Var Control (IVVC) program and physically verified that such equipment had been located at substations and installed on the associated circuits. Staff did not note any discrepancies with regard to its physical audit. (Staff Comments at 12.)

C. Staff Recommendations and Intervenor Comments

(1) Advanced Metering Infrastructure (AMI)

Staff determined that CSP counted certain meter purchase invoices and accounts payable accrual entries twice which CSP subsequently corrected beyond the audit review period. Staff recommends an adjustment of \$10,747,780 to 2009 capital expenditures for AMI. (Staff Comments at 11.)

CSP answers that the company accrued \$8,789,680 as an estimate of invoices not yet processed at the end of 2009 to assure that services rendered through December 31, 2009 were booked during the proper period. CSP contends this is a routine practice and the entry is corrected and reversed when the invoices are received and entered. For this reason, CSP agrees that it is appropriate to omit \$8,789,680 from the company's December capital balance for property with a seven-year depreciable life but notes that this amount will need to be reflected in January 2010 capital expenditures. (CSP Reply 1-2.) Further, CSP argues that the remaining \$1,958,100 was supported by documentation provided to Staff in response to data requests. CSP explains that \$979,050 was presented on two invoices, and, therefore, \$1,958,100 was not actually counted twice and should not be excluded from the gridSMART filing. (CSP Reply at 2-3.) By letter dated July 21, 2010, CSP agrees that, due to the timing of unvouchered liabilities from December 2009, the company will exclude \$8,789,680 from the 2009 recovery request (AEP-Ohio Letter at 1).

By letter dated July 30, 2010, Staff states that it agreed with the resolution proposed by CSP in its letter for purposes of reaching a reasonable outcome in this matter. Staff further states it has no remaining issues that require an adjudicatory hearing. (Staff Letter at 1-2.) In its comments of August 9, 2010, OCC states that it does not object to the exclusion of the unvouchered liabilities from the gridSMART rider (Second OCC Reply Comments at 3).

The Commission finds this to be a reasonable resolution of the issue.

(2) Labor Expense

Staff contends that any allowable O&M labor expense allocated to gridSMART should be incremental and specifically related to gridSMART. Based on its review, Staff asserts that there is no evidence that labor expenses are incremental. For this reason, Staff recommends that O&M labor/overheads of \$120,895, labor fringe benefits of \$47,375, and stock-based compensation of \$3,486, for a total of \$171,756, be excluded from CSP's expenses. (Staff Comment at 11.)

CSP states that on June 1, 2009, the company created three new positions to support the gridSMART project, incurring \$166,728 in O&M labor expenses. Existing

employees also specially allocated time to the gridSMART project, resulting in \$5,028 in labor expenses. CSP argues that, while only incremental labor costs directly attributable to the gridSMART project should be included in the gridSMART rider, it will not always be the case that new employees are dedicated exclusively to gridSMART. In support of its position, CSP notes that the ESP cases included O&M expenses for internal labor as part of the proposal which the Commission approved. CSP contends that only permitting internal labor costs to be recoverable for new full-time positions through the rider may not utilize the lowest reasonable costs to be passed on to ratepayers or permit CSP management to utilize the most experienced employees on gridSMART. CSP is willing to conditionally accept Staff's proposed adjustment of \$5,028, contingent upon the Commission's willingness to accept the \$5,028 adjustment in this case without prejudice to resolution of incremental internal labor costs in future gridSMART rider reconciliation proceedings. (CSP Reply at 3-4.)

Nonetheless, based on discussions with the Staff and other interested parties, CSP agrees to exclude from the \$602,605 of O&M internal labor expenses included in the application \$435,877. Thus, only \$166,728 of incremental labor costs for gridSMART will be recovered for 2009 (AEP-Ohio Letter at 1). Staff agrees with CSP's proposed resolution of this issue (Staff Letter at 1-2). OCC states that it does not object to the exclusion of the unvouchered liabilities from the gridSMART rider (Second OCC Reply Comments at 3).

The Commission finds CSP's agreement, and the Staff's and OCC's acquiescence, to include only \$166,728 of incremental labor in the O&M internal labor expense for the gridSMART rider to be a reasonable resolution of the issue.

(3) Other Expense

(a) Mobile Interest Center

Staff opposes CSP's inclusion of costs related to its Mobile Interest Center through the gridSMART rider asserting that it is not part of the deployment. Further, Staff reasons that this position is consistent with the position the Commission took in Duke Energy of Ohio's SmartGrid Deployment Case.⁷ Accordingly, Staff recommends a reduction in the rider of \$152,096. (Staff Comment at 11-12.)

In response, CSP states that the mobile interest center, unlike Duke's Envision Center, is a key component to customer education and understanding the gridSMART initiative. Through the mobile interest unit, CSP asserts that it will be able to expose customers to the benefits of the gridSMART project. Customers will be able to touch

⁷ *In the Matter of the Application of Duke Energy Ohio Inc. to Adjust and Set its Gas and Electric Recovery Rate for SmartGrid Deployment under Rider AU and Rider DR-IM*, Case No. 09-543-GE-UNC, (Duke SmartGrid Deployment), Opinion and Order at 6, 10 (May 13, 2010).

and see, as well as have an opportunity to discuss the various components of the gridSMART project and enroll in various consumer programs at community events, city council meetings and other special activities. The mobile interest unit also provides the customer with information on energy efficiency. (CSP Reply at 4-6.)

The Commission believes that customer education is vital to the success of the gridSMART Phase I project. Through the Mobile Interest Center, CSP can make contact with the customer and demonstrate the technology available to monitor energy usage and permit the customer the option to better control energy usage and electric bills. In addition to sending customers within the project area information about gridSMART by the usual means (mail, bill messages and making it available on the company's website), the Mobile Interest Center is a proactive means of demonstrating aspects of Phase I gridSMART to project customers, as well as other CSP customers, in preparation for gridSMART deployment throughout its service territory. Further, the Mobile Interest Center is an interactive means of getting the information to customers, with the opportunity for customers to ask questions and enroll in the service options available. For these reasons, the Commission finds that the cost of the Mobile Interest Center is a key component of gridSMART and the costs are appropriately included in the gridSMART rider.

(b) Carrying Charge

In its comments, Staff explains that the carrying charge to be applied to the gridSMART investment made in 2009 and projected for 2010 consists of four components. The revenue requirement rate consists of: (1) a rate of return factor; (2) a depreciation expense factor; (3) a federal income tax (FIT) factor; and (4) a combined property taxes and administrative and general (A&G) factor. (Staff Comments at 12.)

(1) Rate of Return Factor

Staff notes the rate of return factor used in the 2009 actual cost calculations is not the same as that reflected in the projected period. The factor in the 2009 actual calculation was based on actual interest rates updated monthly, and the debt portion was adjusted. According to Staff, the rate of return factor CSP used for the projected calculation is based on the weighted average cost of capital (WACC), 8.11 percent. Staff says that the actual interest cost used by the CSP, however, includes the effect of short-term interest costs which causes the rate to vary monthly. Therefore, Staff recommends that the CSP use the same WACC approved by the Commission in the Companies' ESP cases, subject to update should the Commission approve another debt/equity structure. (Staff Comments at 12-13.)

Subsequently, based on discussions with the Staff and other interested parties, CSP agrees to revise the carrying cost calculations to use the same WACC and debt/equity ratio approved in its ESP case (AEP-Ohio Letter at 1).

(2) Depreciation Expense Factor

Staff notes that in the gridSMART filing, CSP used a different depreciation factor for the actual revenue requirement and the projected revenue requirement. Staff recognizes that CSP updated the 2009 depreciation factor to reflect current depreciation rates and that the projected revenue requirement is based on the depreciation factor approved in the ESP cases. Staff recommends that the latest approved depreciation factor be used to calculate the revenue requirement for the actual and projected periods 2009 – 2010. (Staff Comments at 13.)

CSP has agreed to revise the carrying cost calculation to use the depreciation factor approved in its ESP case as Staff recommends (AEP-Ohio Letter at 1).

(3) FIT Factor

The FIT factor normalizes the effect of accelerated depreciation to straight line depreciation. Staff determined that the FIT factor in the gridSMART application is the same as the factor approved in the Companies' ESP order and has been consistently applied; therefore Staff recommends no changes unless there is an approved change in the depreciation factor. (Staff Comments at 13.)

(4) Property Taxes and A&G factor

According to Staff, the gridSMART application incorporates the same CSP property taxes and A&G factor as that approved in the ESP case, for both the actual and projected revenue requirements. Staff notes that the revenue recovery rate of 13.52 percent for the property taxes is based on a ratio of the booked property tax as of December 31, 2007, to the total plant, as used in CSP's ESP case for environmental plant investments. Staff notes that Ohio law exempts certified pollution control facilities from personal property taxes pursuant to Sections 5709.20 to 5709.27, Revised Code. Staff further contends that certified pollution control facilities are generation-related property and that the noncertified plant is assessed property taxes on 24 percent of the true value pursuant to Section 5727.111, Revised Code.⁸ In this case, Staff argues that CSP's gridSMART investment is part of the distribution function and, property tax for distribution-related property is assessed on 85 percent of the true value. For this

⁸ Section 5727.111(E), Revised Code, states:

- (1) For tax year 2005, eighty-eight per cent in the case of the taxable transmission and distribution property of an electric company, and twenty-five per cent for all its other taxable property;
- (2) For tax year 2006 and each tax year thereafter, eighty-five per cent in the case of the taxable transmission and distribution property of an electric company, and twenty-four per cent for all its other taxable property.

reason, Staff believes that the property tax component of the carrying cost developed in the ESP case should be corrected to 15.14 percent. (Staff Comments at 13-14.)

The total effect of Staff's recommended adjustments to the carrying charge would result in an increase of \$560,378 (Staff Comments at 14).

OCC opposes Staff's recommendation to increase the carrying charge rate to 15.14 percent and ultimately increase carrying charges by \$560,378. OCC reasons that the Staff did not present its calculation in its comments and that the increase will further burden AEP-Ohio customers during difficult economic times. (OCC Reply at 3.)

By letter dated July 21, 2010, CSP agrees to revise the carrying cost calculation to use the same FIT factor, property taxes and A&G factor approved by the Commission in the company's ESP case, except with a correction to the property tax component to reflect that the gridSMART facilitates are not exempt from personal property taxes, as the Staff recommends (AEP-Ohio Letter at 1). Staff agrees with CSP's proposed resolution of the issues raised with regard to the calculation of carrying costs (Staff Letter at 1-2).

OCC continues to object to the method for calculating the annual carrying cost as presented by CSP in its July 21, 2010 letter. OCC argues that although the revised method for calculating carrying charges reflects the elimination of most of the personal property taxes and the change in the valuation of the enhanced vegetation investment for property tax purposes, as the Commission did not specify the carry charge for gridSMART in the ESP case. OCC further argues that CSP has not demonstrated that the proposed annual carrying charge rates are just and reasonable or demonstrated that the financial data and operating information used in 2006-2007 is just and reasonable in calculating the 2009 carrying charge for gridSMART investments. If the Commission accepts CSP's and Staff's carrying charge proposal, OCC states that CSP should be directed to record all depreciation expenses it collects through the annual carrying charges in the gridSMART rider as accumulated depreciation and that the accumulated depreciation should be deducted from the rate base of distribution-related assets in the company's next distribution or ESP case. (Second OCC Reply Comments at 4-5.)

In response, CSP argues that OCC ignores that the Commission specifically provided for the "recovery of half of the gridSMART Phase I incremental revenue requirement, \$32 million, in the First ESP EOR. CSP contends that the \$32 million was based on one-half of the 2009-2011 gridSMART costs over the ESP period including \$9.8 million of O&M and carrying costs exceeding \$20 million on gridSMART expenditures as set forth in CSP's exhibits to the ESP cases.⁹ CSP notes that Staff agreed with its updated position on the carrying charge. Finally, as to the carrying charge, CSP states

⁹ Cos Ex. 1, DMR-4 (Roush) and Cos. Ex. 7, PJN-10 (Nelson).

that it is recording depreciation of the gridSMART equipment on its books with a contra credit entry to accumulated depreciation which would be deducted from rate base in any future distribution or ESP case. (Second CSP Response at 3-4.)

As part of AEP-Ohio's ESP cases, the Commission evaluated and approved the carrying cost rate for the Companies' gridSMART and environmental investments.¹⁰ The carrying cost in the ESP case is the most recent approved for AEP-Ohio. While we are mindful that using the most recent approved carrying cost rate increases the carrying charges, as OCC notes, it is the Commission's practice in subsequent proceedings to use the most recently approved carrying cost rate. Accordingly, we find it reasonable and appropriate to use the carrying cost rate approved in CSP's ESP case in the gridSMART rider calculation, except as to the amendments recommend by Staff and agreed to by CSP to correct the property tax component. Further, to the extent that CSP is recording depreciation on gridSMART equipment with an entry to accumulated depreciation to be deducted from rate base in any future distribution or ESP proceeding. We find that such transactions avoid double recovery of capital investments in gridSMART. For these reasons, the Commission finds that the issues raised regarding the carrying cost calculation for CSP's gridSMART rider have been adequately and reasonably addressed.

(c) Other Staff Adjustment

Staff notes that it identified a \$9,554 Allowance for Funds Used During Construction (AFUDC). Staff reasons that such charges are inappropriate since CSP has been recovering gridSMART costs through the gridSMART rider as established in the ESP cases. The Commission agrees with the Staff that since CSP was collecting under the gridSMART rider, it is inappropriate for the company to include AFUDC in the rider. CSP should exclude \$9,554 from the gridSMART rider calculation.

D. Intervenor Comments

In its comments and reply comments on the gridSMART application, IEU-Ohio notes that CSP did not provide an itemization of the individual enhancements to the gridSMART plan. IEU-Ohio reasons that a more detailed examination of the gridSMART enhancements is necessary and requests that the Commission not approve recovery of the enhancements as a part of this case. (IEU-Ohio Comments at 6-7; IEU-Ohio Reply at 4-5.)

Similarly, OPAE notes that CSP's proposed gridSMART project, as set forth in the ESP case, has been significantly enhanced by CSP. OPAE offers that it is not unlikely that the implementation of CSP's gridSMART Phase I would be delayed given

¹⁰ In re AEP-Ohio ESP Order at 24-28; First ESP-EOR at 11-13.

the demand throughout the country. OPAE, therefore, encourages the Commission to true-up the gridSMART rider for prudently incurred cost pursuant to the gridSMART project approved by the Commission in the ESP case and the overrecovery for 2009. (OPAE Comments at 2-3.)

CSP responds that OPAE's presumption of further delay is without merit. CSP explained the unique circumstances of the temporary deployment delay. CSP requests that the Commission deny OPAE's request to modify the gridSMART application. (CSP Reply at 8-9.)

Further, IEU-Ohio and OPAE implore the Commission to include, as a part of any order issued, that the Commission will investigate and determine whether CSP may collect on the increased gridSMART plan costs in a future CSP case. OPAE reasons that if the enhancements/equipment is included in rate base, even if donated, the Commission should determine if the expanded gridSMART project is beneficial to customers. (IEU-Ohio Comments at 6-7; IEU-Ohio Reply at 4-5; OPAE Comments at 3-4.) OPAE argues that CSP mistakenly believes that the Commission approved \$109 million for gridSMART but the First ESP EOR only approved recovery of half the cost of \$64 million. OPAE contends that recovery of any additional funds must be separately authorized by the Commission after a prudency review in a separate proceeding or as a component of the next SSO proceeding (OPAE Comments at 4.)

Similarly, OCC expresses some reservation that CSP may attempt to collect the additional gridSMART enhancement costs from Ohio's ratepayers via another rider proceeding or as part of a general distribution rate case. Thus, OCC requests assurance that neither CSP nor its affiliates will seek recovery of the \$41.3 million in a future distribution rate case or new rider and further requests that the Commission prohibit recovery of gridSMART-related costs by any other means than the gridSMART rider. (OCC Comments at 4-5).

In response to OCC's arguments, CSP explains that a review of the company's ESP application and this reconciliation application clearly indicate that CSP did not intend and never would recover the entire cost of the gridSMART Phase I investment during the 2009 - 2011 ESP period and that additional investment would need to be recovered from ratepayers during CSP's next standard service offer or through a general distribution rate proceeding. CSP interprets the ESP Order and EORs to confirm the Commission understanding that such was to be the case. Thus, CSP requests that the Commission affirm that the company's prudently incurred costs relating to the enhanced gridSMART Phase I initiative, minus federal funding and vendor in-kind contributions, will be recoverable from ratepayers. (CSP Reply at 6-8.)

In its letter dated July 21, 2010, CSP requests that, based on the ARRA stimulus funding of \$75 million and the additional nonaffiliated in-kind contribution of \$10.85

million, the Commission approve CSP's continued implementation of the enhanced gridSMART initiative as described in this application. CSP recognizes that recovery of CSP's enhanced gridSMART implementation costs will continue to be subject to review in future rider proceedings. CSP argues that the 2009 costs reviewed in this proceeding were prudently incurred and appropriate for recovery. (AEP-Ohio Letter at 2.)

The Commission recognizes that it directed CSP to apply for ARRA matching funds and that CSP, as a requirement for securing ARRA funding, was required to expand its smart grid project. Such costs, if found to be just and reasonable, will be recoverable in a future proceeding. However, the Commission clarifies that we are not approving recovery of specific expenditures at this time.

Further, based on discussions with the Staff, CSP agrees to establish a gridSMART working group. Participation in the gridSMART working group will be open to interested stakeholders, including Staff and OCC. The gridSMART working group will meet quarterly to discuss ongoing matters involving customer education programs, implementation milestones, metrics for evaluation of various aspects of the initiative, updated projections of operational cost savings, cost recovery issues and other matters of interest to the group. CSP proposes that the primary goal of the working group be to allow for input by stakeholders and provide updates on CSP's implementation progress and plans. Further, according to CSP, the focus of the gridSMART working group's efforts would be on post-2012 plans for expanding beyond Phase 1 gridSMART for both CSP and OP. (AEP-Ohio Letter at 2.)

Although, OCC supports the establishment of a gridSMART working group, OCC would like the Commission to go further to mandate the timing and substance of the working group. (Second OCC Reply Comments at 3-4.)

The Commission supports CSP's proposal and encourages the timely establishment of a gridSMART working group for CSP and interested stakeholders which should emphasize the development of a coordinated consumer education program. Working groups can provide an efficient and effective means to implement various programs and address a wide-range of issues. It is critical that working groups have sufficient flexibility to raise and address the concerns presented.

In regard to the customer-interface capabilities of gridSMART, CSP agrees that through the end of 2011:

- (1) CSP will not utilize prepaid metering;
- (2) CSP will not require mandatory time-of-use rates although an opt-out program would be permissible; and

- (3) CSP will not seek a waiver of Rule 4901:1-18-05(A), Ohio Administrative Code (O.A.C.), regarding personal or written notice, prior to utilizing any remote disconnection capabilities for nonpayment with the understanding that, once properly noticed, the Companies may utilize the remote disconnect functionality. CSP requests that, in this context, the Commission confirm that no rule waiver is required to utilize the remote disconnect capabilities when disconnecting services at a customer's request.

(AEP-Ohio Letter at 2.)

Although, CSP agrees not to seek a waiver of Rule 4901:1-18-05(A), O.A.C., OCC expresses some concern about CSP's capability to utilize remote disconnection capabilities and the consumer protection provisions in the rule. OCC notes that the Commission recently denied Duke Energy Ohio's request to waive personal notice provisions of Rule 4901:1-18-05(A), O.A.C., and the Commission's decision not to adopt prepaid metering provisions in its rule review proceedings.¹¹ Further, OCC argues that CSP did not address any reduction in the distribution charges that would result from remote disconnections and notes that the Commission has not determined the reasonableness of imposing disconnection/reconnection charges where such actions are performed remotely. OCC advocates that gridSMART customers be provided special notices several business days prior to disconnection informing the customer that the disconnection will occur remotely and, therefore, a company employee will not be out to perform the task and the specific date of disconnection. (Second OCC Reply Comments at 5-8.)

CSP states that the July 21, 2010 letter was intended to clarify that it may utilize the remote disconnection functionality in a manner that is consistent with the Commission rules. Nonetheless, CSP affirms that it will follow all aspects of Rule 4901:1-18-05, O.A.C., absent a waiver and agrees not to seek a waiver of the rule before the end of 2011. (Second CSP Response at 4-6.)

The Commission is mindful that many customers may be apprehensive about various gridSMART technologies, particularly remote disconnection capabilities. We also have no intention of circumventing the consumer protections provided in Rule 4901:1-18-05, O.A.C., or similar provisions in the rules to be effective November 1, 2010. As such we confirm that CSP shall comply with the requirements of Rule 4901:1-18-05, O.A.C., as currently effective or similar provisions to be effective November 1, 2010. CSP may utilize the remote disconnection capabilities of gridSMART and shall not be required to implement any additional notice requirements to utilize the remote

¹¹ See *In re Duke Energy Ohio, Inc.*, Case No. 10-249-EL-WVR, Entry at 7 (June 2, 2010); *In re Review of Chapters 4901:1-17 and 4901:1-18, O.A.C.*, Order at 4 (June 28, 2008).

disconnection capabilities provided all the other requirements of the rules in Chapter 4901:1-18, O.A.C, have been met.

OPAE requests that the gridSMART rate be stated as a dollar amount, as opposed to a percentage of base distribution rates, so customers can readily determine what gridSMART costs (OPAE comments at 4-5). CSP submits that the percentage increase rate design was used and approved in the ESP cases and is the appropriate, cost-based recovery mechanism. Further, CSP argues that OPAE's claim that a dollar amount rate would provide customers more transparency is speculative at best as a customer would still need to take the amount and calculate it by usage to obtain a dollar amount per month associated with the gridSMART rider. (CSP Reply at 9.)

The Commission recognizes that stating the gridSMART rider rate as a percentage of base distribution rates is consistent with the rate method set forth in the ESP case. However, it is equally important that customers understand the charges on their electric utility bill. To that end, the Commission directs CSP to revise the gridSMART rate to be a fixed monthly per bill charge, consistent with the Commission's decision in *In re Duke Energy Ohio Inc.*, Case No. 09-543-GE-UNC, et al., Opinion and Order at 5-6 (May 13, 2010); and *In re FirstEnergy Companies*, Case No. 09-1820-EL-ATA, et al., Finding and Order at 9 (June 30, 2010).

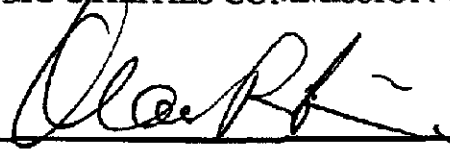
It is, therefore,

ORDERED, That CSP is directed to file tariffs consistent with this finding and order. It is, further,

ORDERED, That CSP revise the gridSMART rate to be a fixed monthly per bill charge. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all persons of record in this case.

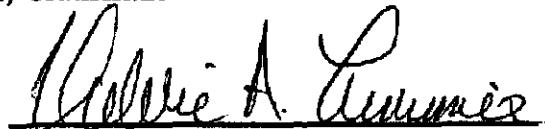
THE PUBLIC UTILITIES COMMISSION OF OHIO



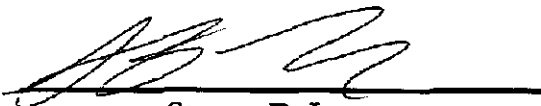
Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser

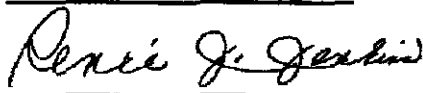


Cheryl L. Roberto

GNS/dah

Entered in the Journal

AUG 11 2010



Renée J. Jenkins
Secretary