

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company to Update Each) Case No. 10-477-EL-RDR
Company's Transmission Cost Recovery)
Rider.)

ENTRY ON REHEARING

The Commission finds:

- (1) On April 14, 2010, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or Companies) filed an application to update its transmission cost recovery riders (TCRR) pursuant to Section 4928.05(A)(2), Revised Code, and Chapter 4901:1-36, Ohio Administrative Code (O.A.C.).
- (2) By finding and order issued June 23, 2010 (Order), the Commission approved CSP's application to reduce its TCRR rates by \$25.6 million for the period July 2010 through June 2011 and OP's application to reduce its TCRR rates by \$29 million for the same period. The June 23, 2010 Order also granted the motions to intervene filed by the Office of the Ohio Consumers' Counsel (OCC) and Industrial Energy Users - Ohio (IEU-Ohio). Further, the June 23, 2010 Order rejected IEU-Ohio's argument that the Commission lost jurisdiction over AEP-Ohio's electric security plan (ESP) cases,¹ and all proceedings stemming from the ESP case, when it failed to issue a decision within 150 days and rejected IEU-Ohio's argument that the Commission cannot permit AEP-Ohio to take the benefits of the rates contained in its ESP, including the TCRR, while it simultaneously contests the ESP order and retains the right to withdraw and terminate its ESP.

¹ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; 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 an Electric Security Plan; and an Amendment to its Corporate Separation Plan, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, Opinion and Order (March 18, 2009), Entry on Rehearing (July 23, 2009) and Second Entry on Rehearing (November 4, 2009) (ESP cases).*

- (3) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in the proceeding by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (4) On July 22, 2010, IEU-Ohio filed an application for rehearing asserting two assignments of error:
 - (a) The June 23, 2010 Order is unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over the TCRR application. IEU-Ohio argues that the Commission lost jurisdiction over AEP-Ohio's ESP and all proceedings stemming from the ESP, including this TCRR proceeding, when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP application.
 - (b) The June 23, 2010 Order is unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP, including the TCRR, while AEP-Ohio simultaneously challenges the ESP orders and reserves the right to withdraw and terminate its ESP.
- (5) On July 30, 2010, AEP-Ohio filed a memorandum contra IEU-Ohio's application for rehearing. AEP-Ohio notes that the Commission has previously considered and rejected these arguments in this case as well as other Commission proceedings. The Companies argue that IEU-Ohio has not raised any new arguments or support for the arguments that have not already been denied. AEP-Ohio requests that the Commission deny IEU-Ohio's request for rehearing.
- (6) The Commission recognizes that these are the same arguments made by IEU-Ohio in its comments in this case and notes that we have previously considered and rejected both of the arguments raised. See, e.g., *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 (May 19, 2010); In re AEP-*

Ohio ESP cases, Second Entry on Rehearing at 6-7 (November 4, 2009); *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC and Case No. 09-873-EL-FAC, Entry on Rehearing at 5-6 (March 24, 2010). IEU-Ohio did not present in its application for rehearing any new arguments that the Commission has not previously considered and rejected. Thus, we again deny IEU-Ohio's request for rehearing on both claims.

- (7) Nonetheless, as to the alleged loss of jurisdiction, we will clarify that 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 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 S.B. 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

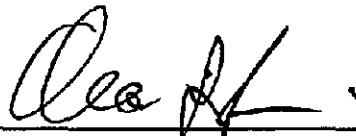
the statute, the time for performance is viewed as directory, not mandatory, *State ex rel. Smith v. Barnell*, 109 Ohio St. 246, 142 N.E.2d 611 (1924). Accordingly, the Commission retained jurisdiction to act on the ESP application and all proceedings stemming from the ESP cases including the TCRR application. Thus, we again reject IEU-Ohio's arguments of lost jurisdictions.

It is, therefore,

ORDERED, That IEU-Ohio's application for rehearing is denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all persons of record in this case.

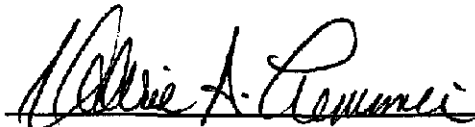
THE PUBLIC UTILITIES COMMISSION OF OHIO



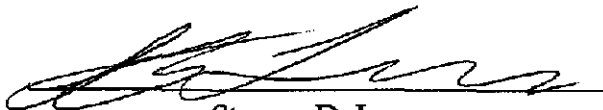
Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser

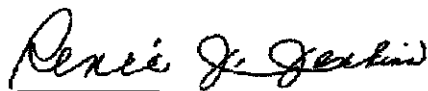


Cheryl L. Roberto

GNS/vrm

Entered in the Journal

AUG 18 2010



Renee J. Jenkins
Secretary