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BEFORE.

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM

MEMORANDUM CONTRA MOTION TO DISMISS OF INDUSTRIAL ENERGY USERS-OHIO FILED BY COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

Filed May 25, 2011

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THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	
Ohio Power Company for Authority to	)	**Case No. 11-346-EL-SSO**
Establish a Standard Service Offer	)	**Case No. 11-348-EL-SSO**
Pursuant to §4928.143, Ohio Rev. Code,	)	
in the Form of an Electric Security Plan.	)	
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MEMORANDUM CONTRA MOTION TO DISMISS OF INDUSTRIAL ENERGY USERS-OHIO FILED BY COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

I. Introduction

The Industrial Energy Users-Ohio (IEU) filed a motion to dismiss Columbus Southern Power Company's (CSP) and Ohio Power Company's (OPCo) (collectively "AEP Ohio" or "Companies") applications to establish a standard service offer in the form of an electric security plan. The motion to dismiss is without merit. The motion ignores the Commission's discretion over its dockets and operations, ignores previous Commission consideration, and improperly raises issues related to the merger proceeding.

CSP and OPCo do not attempt to hide the fact that a merger request is pending and that the filing, necessitated by the expiration of the initial standard service offer, is being made with that realization. CSP and OPCo state as much on the first page of its

application, "[t]his application has been developed and presented as a single company filing, given the proposed merger of CSP and OPCo (currently pending in Case No. 10-2376-EL-UNC) that is expected to close prior to 2012." (CSP & OPCo Application at 1.) The filing recognizes the new direction provided by Governor Kasich and Chairman Snitchler that the State of Ohio and the Commission move at the speed of business. A filing that recognizes the pending merger between these two Ohio operating companies is the most representative filing of what business should look like in advance of the start of the new standard service offer period in January of 2012. This filing provides the Commission, its Staff, the interested parties and the public an opportunity to evaluate the appropriate business environment and not an application and system that would necessitate a last second deviation calling into risk the timely implementation of the standard service offer.

CSP and OPCo provided the Commission with the appropriate information to perform its statutory duty to consider the application as filed by the Companies and a process to adapt if needed. As pointed out in the application "the documentation and work papers include sufficient information for the ESP to be evaluated for CSP and OPCo independently if needed." (CSP & OPCo Application at 2.) In addition the application includes a "bridge" proposal should the merger not be completed by the start of the standard service offer. (Id.) Finally, the Companies commit to provide June 30, 2012, as a backstop, so that in the unlikely event that a ruling on the merger is not provided by then the Companies will provide the proper amendments to ensure separate rate plans for each of the Companies at that time. (Id.)

The Companies have filed a proper application as allowed under R.C. 4928.143 for the Commission to consider and accept, reject or modify. IEU's desire to prevent the Commission from moving at the speed of business and bury its head in the sand should not be entertained. The Commission has discretion and control over its dockets and should move forward with its consideration of the merits of the applications filed. The motion to dismiss should be denied.

II. Argument

A. IEU's Arguments in Support of Dismissal

IEU, in its summary of the argument, provides three main arguments seeking dismissal of the Companies' applications. IEU states that CSP and OPCo fail to comply with R.C. 4928.141 and 4928.143 and Commission rules because:

1) The Companies' application seeking to treat the EDUs as a single entity is inconsistent with the statutory requirement that only an EDU may seek an ESP;
2) The application fails to provide information necessary to evaluate the effect of the rate increase on each EDU's customers; and
3) The application fails to provide the information necessary to assess the various proposals contained in the application.[1]

[1] IEU Memo in Support MTD at 10.

B. Arguments Supporting Denial of IEU's Motion to Dismiss

1. Columbus Southern Power Company and Ohio Power Company filed proper applications for a standard service offer under R.C. 4928.141. and 4928.143.

IEU argues that the application was not made by an electric distribution utility and therefore subject to dismissal. (IEU Memo in Support MTD at 11-13.) IEU asserts that because "AEP Ohio," as an entity, is not an electric distribution utility that the filing is improper, that the plan must relate to the terms of service of the electric distribution utility, that the provisions requested under R.C. 4928.143(B)(2) relate specifically to charges of an electric distribution utility, and the application does not conform to the Commission's filing requirments. IEU's assertion that the Companies' applications are subject to dismissal because of the proposal to create a single electric security plan ignores the actual filing and the applicable revised code.

The Companies applications to establish an electric security plan under R.C 4928.143 is valid and appropriate for Commission consideration as the Companies next standard service offer. As stated in R.C. 4928.143:

> (A) For the purpose of complying with section 4928.141 of the Revised Code, an electric distribution utility may file an application for public utilities commission approval of an electric security plan as prescribed under division (B) of this section.***
>
> (B)(1) An electric security plan ***shall*** include provisions relating to the supply and pricing of electric generation service.***
> (2) The plan ***may*** provide for or include, without limitation, any of the following:***

(emphasis added). The governing statutory provisions require an application to be filed by an electric distribution utility that includes at a minimum provisions relating to the supply and pricing of electric generation. The application may include other provisions

as well, but the core requirement for Commission consideration is that it contain provisions relating to the supply and pricing of electric generating service.

The Companies' applications are ripe for Commission review because they were filed by existing electric distribution utilties and include provisions relating to the supply and pricing of electric generation. CSP filed its request to establish an electric security plan under Commission Case No. 11-346-EL-SSO. OPCo filed its request to establish an electric security plan under Commission Case No. 11-348-EL-SSO. Each company filed for establishment of provisions related to the supply and pricing of electric generation service.

The Companies did propose a single set of rates in recognition of the pending merger docket before the Commission as part of those independent utilty dockets. IEU presents a scenario where a fictitous entity has filed a request for Commission consideration of an electric security plan. That is not the case. The individual electric distribution utilities filed plans proposing a structure that would allow the Commission to plan ahead for the business contingency (the merger) while still providing adequate information for the Commission on the individual companies if it needed to adapt. In recognition of the possibility that the merger action may not become official before the start of the new standard service offer period the Companies provided for a "bridge" rate as well as a commitment to file the appropriate amendments by June of 2012 if needed. IEU may not agree with the plan, but that does not erase the fact that CSP and OPCo have the right to propose the plan and the Commission has the right to consider such a plan.

The Commission is interested in the efficient processing of its cases and is vested with broad discretion in the handling of its docket and cases. The Supreme Court has declared as much stating, "[i]t is well-settled that pursuant to R.C. 4901.13, the commission has the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort." *Weiss v. Pub Util. Comm*, 90 Ohio St. 3d 15; 2000 Ohio 5; 734 N.E.2d 775; *Toledo Coalition for Safe Energy v. Pub Util. Comm.* (1982), 69 Ohio St. 2d 559, 560, 23 Ohio Op. 3d 474, 475, 433 N.E.2d 212, 214. The recent change in leadership both at the head of the executive branch and at the Commission was met with a desire to ensure government functions are moving at the "speed of business" and not be stuck in bureacracy. The applications filed by the Companies embrace the discretion of the Commission to accomplish the stated goal of allowing business to move at the appropriate speed without unnecesary government delays.

The other IEU arguments dealing with provisions that may be included in an electric security plan request amount to arguments attacking the specific requests within the electric security plan. Those items are up for debate and IEU will have abundant opportunities before the Commission to explain its opposition to the items, but nothing in the statute, or the Commission's rules, prevents the Companies from filing its application recognizing the broader scope of the Commission's review to include the merger and allow the Commission to stay in line with the timing of the business world and not have to adapt at a later date and risk undue delay.

The Companies filed, as electric distribution utilities, application for an electric security plan that contains provisions for the supply of electric service. The Companies proposed a plan that allows the Commission to efficiently consider the new standard service offer in the context of the business world that will exist during the time of the plan, with the appropriate supporting information to support the individual company numbers. IEU's attempt to tie the Commission's hands shoud be rejected and the Commission should avoid creating another time crunch for the consideration of the Companies' electric security plan.

2. Columbus Southern Power Company and Ohio Power Company filed applications that provide the information necessary, or were granted a waiver, to allow the Commission to evaluate the effects on the Companies' customers.

IEU's second argument is also without merit. IEU fails to recognize the separate company filings and the Commission's March 23, 2011 Entry granting a requested waiver and moving the case forward for consideration.

IEU argues that the application fails to provide information necessary to evaluate the effect of the rate increase on each EDU's customers. (IEU Memo in Support MTD at 13-15.) IEU supports this contention with the same argument previously provided, that the statute requires an electric distribution utility file the application with the addition of the argument that the rules require the electric distribution utility to comply with certain filing requirements. (Id. at 13.) IEU asserts that the applications' failure to identify terms and conditions applicable to each electric distribution utility violates R.C. 4928.143 and 4928.144. As examples, IEU highlights the inclusion of the Turning Point project in the filing and the lack of costs or details on the project. IEU also mentions the claim for

cost recovery of the carbon capture and sequestration project lacking a demonstration that the costs incurred are proper to include in generation rates. (Id. at 14.) IEU also attacks the statutory support for what it calls "placeholder riders" with no present costs. Finally, IEU argues that the information provided in relation to the spread of the deferrals to the two companies and the pro forma statements are improperly mixed without justification.

As discussed above it is not "AEP Ohio" as an entity that has filed the present applications. CSP filed an application in 11-346-EL-SSO and OPCo filed an aplication in 11-348-EL-SSO. IEU's statement that "AEP Ohio" does not serve a certified territory ignores the actual filings being made as proposals by valid electric distribution utilities. (IEU Memo in Support MTD at 13-14.) In recognition of the business environment the Companies proposed an application that set a single electric security plan and provided a contingency plan should that merger not be realized in time for the start of the new period or if longer by next summer. Thus the argument that the filing does not comply with the letter of the law is incorrect. The filing parties are electric distribution utilities that filed applications relating to the provision of electric generating service. The letter of the law is met and the request to dismiss the application should be denied.

IEU's arguments concerning the Turning Point project ignores the Commission's grant of a waiver in this case. On March 23, 2011, the Examiner in the case granted a waiver to the Companies from certain provisions under O.A.C. 4901:1-35 concerning the Turning Point Project. The Commission detailed the Companies' request to develop the necessary facts concerning the project and the requested waiver in its Entry. (March 23, 2011 Entry at para. 3.) The March 23, 2011 Entry grants the requested waiver while clarifying that the information should be provided if Staff determines it becomes

necessary to process the application. (Id. at para. 5.) This shows two things, one that the Companies were granted a waiver from providing certain information on Turning Point, and two that the Staff is reviewing the entire application and has the ability to do its analysis, as well as the ability to seek further information if needed. This is a fact beyond the Turning Point project. Staff has access to the Companies' information beyond the information already provided both supporting the single electric security plan filing and the individual numbers on each operating company.

IEU seeks to shortcut its disagreement with the plan outlined in the applications and even elements of the pending merger by challenging the merits of many of the items in the proposal (i.e. Turning Point, carbon capture, riders, deferrals, and pro forma statements) as preliminary procedural issues. IEU's arguments on the merits of a specific provision of the plan or an impact from the merger are an inappropriate argument to justify dismissal of these applications. The Commission should avoid ruling on IEU's merit arguments as grounds for dismissal and allow the cases to move forward for Commission consideration as outlined in R.C. 4928.143. The same analysis applies to IEU's concern with what it labels "placeholder riders." The statute authorizes the creation of distribution and generation terms and services. The size and scope of those big or small are matters for hearing not prehearing motions to dismiss. Similarly the argument that the Commission is without the information to assess the Companies' plan is rooted IEU's refusal to accept the plan filed by the independent electric distribution utilities as a valid plan and its merit arguments with the proposed merger. Those merit issues and faulty reliances should not be entertained by the Commission in this case and IEU's motion should be denied.

3 Columbus Southern Power Company and Ohio Power Company filed applications that provide the information required by Commission rules to allow for a proper evaluation of the effects on the Companies' customers.

IEU argues that the applications do not provide the information necessary to assess the various proposals contained in the application. (Memo in Support of MTD at 15-18.) IEU takes issue again with the combination of the data including the proforma projections on a combined company basis and the lack of any value attached to the "placeholder riders." (Id. at 15-16.) IEU also argues that the methodology proposed to price the Provider of Last Resort (POLR) option provides only an estimate and not a price to judge, which IEU argues at a minimum violates the spirit of the filing requirements found in O.A.C. 4901:1-35-3(C)(9)(c).

IEU's argument concerning the inability to quantify the authority sought to establish certain riders fits within its theme to challenge issues properly reserved for the hearing in this matter, items waived by the Commission, and/or ignores the statutory authority of the Commission under R.C. 4928.143. As stated previously, the costs associated with the Turning Point project were waived as a filing requirement in the Commission's March 23, 2011 Entry. Likewise, R.C. 4928.143 provides the Commission the authority to establish certain distribution related charges, even nonbypassable charges, as part of an electric security plan without knowledge of what the actual resulting rates will be. In some cases all that is requested in the applications is the authority to establish mechanisms for future use in order to do business. The debate, properly saved for the hearing, is whether those mechanisms are proper to establish. IEU's representation that anything and everything needs to be quantified in a dollar amount simplifies the scope of the Commission's authority under R.C. 4928.143. Costs

cannot always be known and a mechanism seeking to reflect those costs in the future are wholly appropriate under certain portions of R.C. 4928.143. The classic example of this fact is the fuel adjustment clause (FAC). The FAC is authorized by the electric security plan even though the resulting rates are not known at the time of approval. IEU can seek to invalidate the granting of those tools to the Companies to address the changing business environment in its brief after the hearing in this case. This prehearing procedural motion to dismiss is not the appropriate place to raise these arguments, especially since the application has been pending for months.

IEU's argument on what it portrays as the estimated method for determining POLR costs is incorrect. O.A.C. 4901:1-35-3(C)(9)(c)(i) is included in IEU's footnote 40 below its argument which discusses the minimum information an application should include under R.C. 4928.143(B)(2)(d), which states:

> (i) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitaitve justification shall be provided.

As indicated in the rule conditions related to shopping or to returning to the standard service offer (i.e. POLR costs) quantification should be included, to the extent possible.

In fact, that quantification is included in the supporting testimony of the applications with a commitment to update based on any Commission modification. IEU cites to the testimony of Companies witness Laura Thomas for the position that all that is offered by the Companies is a methodology to reach a POLR value. (Memo in Support of MTD at 17.) IEU's analysis leaves out the results of the Companies POLR valuation

at the bottom of page 20 of Companies witness Thomas' testimony. That same amount is applied in Exhibit DMR-1 page 2 of 2 to reflect the proposed POLR rate. In addition, the charge is included in the redlined tariffs, provider of Last Resort Charge Rider (Sheet No. 69-1), found in Exhibit DMR-5 for CSP and Exhibit DMR-6 for OPCo, as well as reflected in the typical bill comparisons found in Exhibit DMR-7. The language relied on by IEU to support its position that the value is not provided is language that commits to update the figure proposed by the Companies dependent upon any changes made by the Commission. A representation that the Companies provided no quantification as outlined by the rule is incorrect. IEU's request should be denied.

IEU's comparison of the recent Commission decision in the Duke market rate option filing[2] under R.C. 4928.142 is not analogous to the facts of these electric security plan applications. At the root of the distinction is the statutory debate involved in that case concerning R.C. 4928.142(D). Under 4928.142(D), the Commission must find as part of the approval of the market rate option the percentage of the blending required for each of the first five years of the offering. Duke sought to skip that five years of transition required by the statute and truncate the filing to a two year process. Absent information to make a finding for years three, four and five the Commission could not make its statutorily required findings. The Commission found that basic statutory flaw resulted in a finding of a non-compliant application. The present case is an electric security plan under R.C. 4928.143, and IEU is simply not satisfied with how the information is portrayed. The bases of IEU's arguments for dismissal are on matters in

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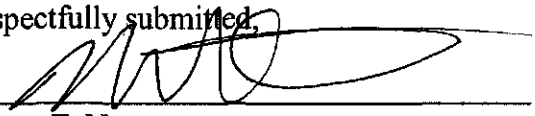
2 *Duke SSO,* Case No. 10-2586-EL-SSO, Opinion and Order at 49 (February 23, 2011).

the merger docket or issues subject to the Commission's discretion after a full Commission process. As such, those arguments should not be relied upon by the Commission and IEU's motion should be denied.

III. Conclusion

The Companies' applications recognize the realities of the business world and provide the Commission the tools to move at the appropriate speed to ensure proper Commission review without undue delay for foreseeable circumstances. It would have been awkward and unrealistic for the Companies to ignore the pending merger and to make two completely separate filings. IEU's motion to dismiss fails to recognize the contingencies provided in the filing and the fact that there are two open dockets with applications filed by Columbus Southern Power Company and the Ohio Power Company. The Commission has ultimate control over its dockets and how it chooses to conduct its business. The Companies provided the Commission with what it felt was the most efficient use of all interested parties time and resources, while also committing to provide whatever additional information is needed to consider the applications filed while still being able to timely implement an electric security plan at the expiration of the current plan, to start the next calendar year. As such, and for all the reasons stated above, the Companies respectfully request that the Commission deny the motion to dismiss.

Respectfully submitted,



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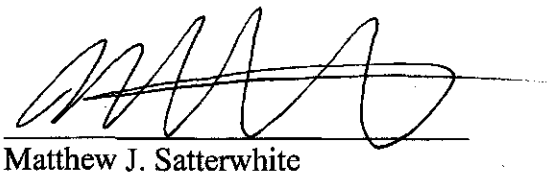
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's MEMORANDUM CONTRA MOTION TO DISMISS OF INDUSTRIAL ENERGY USERS-OHIO FILED BY COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY has been served upon the below-named counsel via First Class mail, postage prepaid, this 25th day of May, 2011.



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