BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Approval of the Shutdown of Unit 5 of the Philip Sporn Generating Station and to Establish a Plant Shutdown Rider.	)))))	Case No. 10-1454-EL-RDR

FINDING AND ORDER

The Commission finds:

(1) Ohio Power Company (OP or the Company) is a public utility and an electric light company within the definitions of Sections 4905.02 and 4905.03(A)(3), Revised Code, and, as such, is subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

(2) On October 1, 2010, OP filed an application requesting that the Commission approve the closure of Unit 5 of the Philip Sporn Generating Station (Sporn Unit 5) to the extent such approval is required by Sections 4905.20 and 4905.21, Revised Code. OP explains that the plant is located on the Ohio River and is comprised of five generation units placed into service between 1950 and 1960. OP states that it owns Sporn Units 2, 4, and 5, while Appalachian Power Company, which operates the plant, owns Sporn Units 1 and 3. According to OP, Sporn Unit 5 is an early supercritical unit that currently has a winter capability of 450 megawatts.

OP further requests that the Commission simultaneously approve the establishment of a Plant Closure Cost Recovery Rider (PCCRR) to collect the costs associated with the closure of Sporn Unit 5. As proposed by OP, the nonbypassable distribution rider would enable the Company to recover incurred closure costs as of December 2010, which include the unamortized plant balance remaining on OP's books (approximately $56.1 million) and unique materials and supplies that cannot be used at other plants (approximately

$2.6 million). The proposed PCCRR would also permit OP to recover closure costs incurred after December 2010, which are expected to include any legally required asset retirement obligations (such as asbestos removal, fly ash pond closure, and disposal of transformer-rectifier set fluids) and any net salvage to be incurred related to the Sporn Unit 5 assets (such as unique materials and supplies). OP requests accounting authority to record the future costs in a regulatory asset/liability account, with such costs being included in the PCCRR when incurred. OP further requests that a weighted average cost of capital carrying charge on the future cost deferrals be recovered through the PCCRR. Finally, OP proposes that the PCCRR rate be implemented outside of the rate caps established in the case approving, as modified, the Company's electric security plan (ESP 1) for 2009 through 2011 (ESP 1 Case).[1]

If the Commission should determine that it is appropriate to mitigate the rate impact of the PCCRR, OP alternatively requests that the Commission amortize recovery of the Sporn Unit 5 closure costs over a 36-month period, with carrying charges being included over the extended recovery period.

(3) In support of its application, OP states:

(a) Effective December 10, 2007, a New Source Review (NSR) Consent Decree, resolving all complaints related to NSR requirements filed against American Electric Power (AEP) and its affiliates, including OP, was entered with the United States Department of Justice. As part of the NSR Consent Decree, Sporn Unit 5 is required to be retired, repowered, or retrofitted by December 31, 2013. AEP's plan to comply with the NSR Consent Decree included retirement of Sporn Unit 5 at the end of 2013.

---

1 *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan*, Case No. 08-918-EL-SSO, Opinion and Order (March 18, 2009) (ESP 1 Order).

(b) Aside from the planned retirement at the end of 2013, AEP's integrated resource planning process had projected the retirement and removal of Sporn Unit 5 as a capacity resource in 2010. As a result, AEP did not bid Sporn Unit 5 into the PJM Interconnection, LLC (PJM) base residual capacity auction for the 2010-2011 planning year, which was conducted in early 2008. Sporn Unit 5 was thus no longer a PJM capacity resource as of June 1, 2010, but was expected to be available to produce power for the PJM energy market through the end of 2013.

(c) During the period prior to OP's ESP 1 application, revenues from Sporn Unit 5, less all operating and maintenance expenses, resulted in an approximately $36.3 million contribution to other costs of the Company and were expected to continue to be available to produce such contributions during the term of ESP 1. Current projections based on economic conditions, however, indicate operating losses of $8.4 million and $6.8 million for 2011 and 2012, respectively, for Sporn Unit 5. The results for 2013 are expected to be similar. For this reason, OP plans to close Sporn Unit 5 earlier than previously expected, contingent upon Commission approval.

(d) In the ESP 1 Case, the Commission approved OP's request for authority to come before the Commission during the term of ESP 1 to determine the appropriate treatment for accelerated depreciation and other net early closure costs in the event it becomes necessary to close a generation plant earlier than previously anticipated.[2] OP submits that the ESP 1 Order thus specifically contemplated the Company's recovery of early closure costs.

---

2 ESP 1 Order at 52-53.

(e) Noting that Sporn Unit 5 has served and benefitted OP's ratepayers during the life of the asset, the Company asserts that shareholders should not be expected to absorb the early closure costs, which represent dollars invested during a regulatory regime in which OP was permitted to recover all prudently incurred costs, including plant closure costs. OP further contends that it would have absorbed such early closure costs, if it had been permitted to transition to market-based generation rates by 2006, as originally contemplated under Amended Substitute Senate Bill 3 (SB 3). Therefore, OP believes that it is reasonable under the circumstances for the Company to recover the costs associated with the early closure of Sporn Unit 5.

(4) Motions to intervene were filed on various dates by Ohio Partners for Affordable Energy (OPAE); Industrial Energy Users-Ohio (IEU-Ohio)[3]; Ohio Consumers' Counsel (OCC); Ohio Environmental Council (OEC); Ohio Energy Group (OEG); Wal-Mart Stores East, LP and Sam's East, Inc. (jointly, Walmart); Sierra Club of Ohio (Sierra Club); and OMA Energy Group (OMAEG). No memoranda contra were filed. The Commission finds that the motions to intervene are reasonable and should be granted.

(5) On October 5, 2010, and December 17, 2010, respectively, motions for admission *pro hac vice* were filed on behalf of David C. Rinebolt for OPAE and Holly Rachel Smith for Walmart.[4] No memoranda contra were filed. The Commission finds that the motions for admission *pro hac vice* are reasonable and should be granted.

---

3 On February 18, 2011, IEU-Ohio filed a motion to consolidate this case with numerous other cases pending before the Commission. This finding and order does not address IEU-Ohio's motion to consolidate.

4 The motions to practice *pro hac vice* were filed prior to the recent amendment of Rule XII, Section 2 of the Government of the Bar of Ohio, which provides new procedures for requesting *pro hac vice* admission.

(6) By entry of March 9, 2011, the Commission established a procedural schedule for the filing of comments and reply comments.

(7) Upon the filing of its application, OP provided PJM, as required, an advance 90-day notification of the planned closure of Sporn Unit 5, contingent upon Commission approval. Subsequently, on March 30, 2011, OP filed notice with the Commission that it was informed by PJM on October 29, 2010, that PJM had identified no reliability violations resulting from the proposed shutdown and that Sporn Unit 5 could be deactivated at any time from PJM's perspective. OP further reported that Monitoring Analytics, LLC, which is known as the Market Monitoring Unit in PJM's Open Access Transmission Tariff, notified the Company on February 1, 2011, that it had identified no market power issue with respect to the proposed closure of Sporn Unit 5.

(8) In accordance with the procedural schedule established in this case, timely initial comments were filed by IEU-Ohio, OEG, OCC, OMAEG, OPAE, Walmart, and Staff on April 8, 2011.[5]

(9) On April 14, 2011, OP filed a motion for a four-day extension of the deadline for reply comments, which was granted by the attorney examiner by entry issued April 15, 2011.

(10) On April 20, 2011, OCC filed supplemental comments, as well as a motion for leave to file supplemental comments *instanter*, pursuant to Rule 4901-1-12, Ohio Administrative Code. In support of its motion, OCC states that it seeks to file supplemental comments in light of a recent decision of the Supreme Court of Ohio that impacts this case. Further, OCC notes that its supplemental comments were included with the motion in order to afford the other parties the opportunity to respond in their reply comments. OCC, therefore, concludes that granting its motion will not adversely affect a substantial right of any party. No memoranda contra OCC's motion were

---

5 OCC, OEC, and Sierra Club also provided comments on OP's application along with their motions to intervene. Subsequently, OP filed comments in response to OCC and OEC. The Commission will consider these filings in addition to the initial comments and reply comments filed in accordance with the procedural schedule.

filed. The Commission finds that OCC's motion for leave to file supplemental comments *instanter* is reasonable and should be granted.

(11) Timely reply comments were filed by OP on April 21, 2011, and by FirstEnergy Solutions Corp. (FES), IEU-Ohio, and OPAE on April 22, 2011.

Staff Comments

(12) In its comments, Staff argues that the Commission should not approve OP's request for recovery of costs associated with the closure of Sporn Unit 5, as there is no statutory basis for recovery of such costs. Staff asserts that Amended Substitute Senate Bill 221 (SB 221) contains no provision allowing for recovery of costs related to the closure of a generating unit. Staff points out that, although Section 4928.143(B)(2)(c), Revised Code, provides for the establishment of a nonbypassable surcharge for the life of a generating facility if specific conditions are met, those conditions have not been met with respect to Sporn Unit 5, because it was constructed prior to January 1, 2009, not competitively bid, and not subject to a determination of need by the Commission. Staff concludes that the only provision under current law that would permit the sort of charge sought by OP does not apply under the circumstances.

Staff further argues that OP's requested relief would conflict with the mandatory policy provision of Section 4928.02(H), Revised Code, which requires the Commission to avoid subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates. Staff notes that generation service is a competitive retail electric service in Ohio pursuant to Section 4928.03, Revised Code; OP seeks to establish a nonbypassable charge that would be collected from all distribution customers; and competitive suppliers cannot collect closure costs from their customers. Staff contends that OP would have a competitive advantage in its generation service business if it were permitted to collect closure costs.

(13) In its reply comments, FES agrees with Staff. OP, however, responds that Section 4928.143, Revised Code, enables the Commission to allow recovery of plant closure costs. Citing Section 4928.143(C)(1), Revised Code, OP argues that the only determination for the Commission to make with respect to a proposed electric security plan (ESP) is whether it is more favorable in the aggregate as compared to the expected results of a market rate offer. OP also disputes Staff's position that SB 221 does not address plant retirement. OP points to Section 4928.143(B)(2)(c), Revised Code, which provides that the Commission may consider, as applicable, the effects of any decommissioning, deratings, and retirements before it authorizes a surcharge pursuant to that provision. OP asserts that this provision is an integral part of attempting to encourage construction of new generating capacity in Ohio. OP submits that, in order to effectively address such construction in a comprehensive manner as envisioned by the General Assembly, the Commission should address the entire investment cycle, including retirement of existing plants, or else capacity will not be built in Ohio. In further support of its request, OP notes that Section 4928.143(B)(2)(d), Revised Code, authorizes recovery of carrying costs and deferrals.

Additionally, OP asserts that, in the ESP 1 Order, the Commission explicitly permitted the Company to request recovery of early plant closure costs during the term of ESP 1.[6] Because no party challenged the Commission's determination on this point, OP states that it is a final and non-appealable order. OP contends that the Commission retains discretion to grant or deny its request, but that no party can reasonably claim that the Commission lacks the legal ability to implement this provision of ESP 1. OP believes that the argument that SB221 precludes recovery of closure costs is a collateral attack on the ESP 1 Order.

Further, OP points out that the Commission has recently represented in comments to the United States Environmental Protection Agency that certain proposed environmental regulations would accelerate the retirement of coal-fired

6 ESP 1 Order at 52-53.

generating plants and that the cost of premature retirements would have a direct impact on rates, in part due to amortization and other closure costs. OP argues that the Commission's comments undercut Staff's position in this case and instead support the Company's policy arguments regarding its request for recovery of early closure costs. OP believes that the Commission has already indicated that ratepayers will pay for early plant retirements and that the Commission may not now claim that such a result is unlawful or unreasonable.

(14) In its comments, Staff further notes that, during the market development period from 2000 through 2005, OP had the opportunity to receive transition revenues, including revenues associated with regulatory assets, to assist the Company in making the transition to a fully competitive retail electric generation market. Staff points out that revenues associated with regulatory assets were to end no later than December 31, 2010, pursuant to Section 4928.40(A), Revised Code, and that, in any event, OP elected to forgo recovery of any stranded generation transition charges pursuant to the stipulation reached in its electric transition plan case.[7]

(15) In its reply comments, FES agrees with Staff, adding that, even if OP's request were timely, the Company has failed to meet the criteria of Section 4928.39, Revised Code. According to FES, these criteria would require that the closure costs be prudently incurred; legitimate, net, verifiable, and directly allocable to retail electric generation service; and unrecoverable in a competitive market; and also require that the Company otherwise be entitled an opportunity to recover the costs.

For its part, OP replies that its request for recovery of the net book value of the plant and other closure costs is not the same as a request for recovery of stranded generation investment. OP further notes that, if it had been permitted to transition to market rates by 2006, it could have absorbed its early plant

---

7 *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case No. 99-1729-EL-ETP, *et al.*, Opinion and Order (September 28, 2000), at 15-18.

closure costs through market prices. Because OP was not permitted to transition to market-based generation pricing, the Company submits that it is reasonable under the circumstances to recover its early plant closure costs. OP also maintains that current law allows the Commission to authorize recovery of the Company's early plant closure costs. OP concludes that arguments regarding recovery of stranded investment costs are neither relevant nor dispositive in light of changed factual and legal circumstances.

(16) Additionally, Staff argues that OP has already been compensated for the costs that it seeks to recover, as Sporn Unit 5 should have been fully depreciated in 2010, based on the depreciation rates established in Case No. 94-996-EL-AIR.[8] According to Staff, these rates included 17 percent closure costs and an escalator of 3.6 percent each year to account for increased costs over time.

(17) In reply, OP disagrees with Staff that the Company's investment in Sporn Unit 5 has been full recovered, noting that depreciation rates established more than 15 years ago should not be used to override the Company's accounting books. OP asserts that Staff's position relies on outdated information and does not conform to established regulatory accounting and ratemaking principles regarding updating depreciation rates when circumstances change. OP admits that some partial adjustment to recovery of future closure costs may be appropriate, given that at least a portion of the closure costs may have been reflected in the previously authorized rates. OP contends that it is nevertheless entitled to recovery of the net book value, which is driven by approximately $70 million in capital plant additions that occurred after the distribution rate case in 1994. OP maintains that the closure costs reflected in its depreciation rates substantially underestimated the actual closure costs that apply to Sporn Unit 5, in light of the dramatic intervening increase in environmental regulations that apply to coal-burning power plants.

---

8 *In the Matter of the Application of Ohio Power Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service and Related Matters,* Case No. 94-996-EL-AIR, *et al.*, Opinion and Order (March 23, 1995), at 36-37.

(18) Finally, Staff notes that, in a recent case, the Commission denied a request for recovery of expenses related to several retired generation facilities, rejecting Ohio Edison Company's claim that the plants remained assets of the electric distribution utility, although they were no longer used for generation.[9] OP replies that the case cited by Staff is inapplicable, as the retired generation facilities did not support the distribution service being priced in the case.

Intervenor Comments

Walmart

(19) Walmart argues that, if the Commission determines that the PCCRR is appropriate, it should be bypassable for customers taking generation service from a competitive supplier, because it would be inconsistent with cost-of-service principles to impose OP's generation costs on such customers. In its reply comments, OPAE disagrees, contending that the costs associated with the closure of Sporn Unit 5 were incurred in the past, prior to shopping in OP's service territory.

(20) Walmart further contends that the charge for the PCCRR should be calculated based on the annual kilowatt demand for customer classes with demand meters. OPAE disagrees, asserting that generation in wholesale markets is priced on a per kilowatt hour basis and that cost recovery should follow the market.

(21) Finally, Walmart states that the Commission should accept OP's offer to mitigate the rate impact of the PCCRR by amortizing recovery of closure costs over a 36-month period. OPAE again disagrees, noting that OP's customers are already facing substantial fuel cost deferrals. OPAE suggests that the deferral should be amortized over a single year or the Commission should deny recovery of carrying charges and

---

9 *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, Case No. 07-551-EL-AIR, *et al.*, Opinion and Order (January 21, 2009), at 14.

amortize recovery over an appropriate period to be determined by the Commission.

OPAE

(22) OPAE argues that, as a result of the deregulation of electric utilities pursuant to SB 3, ratepayers have no legal responsibility for plant closure costs, just as they have no claim on the output of Sporn Unit 5, which OP may utilize as it sees fit. According to OPAE, the fact that Sporn Unit 5 was once used and useful in providing service to OP's distribution customers is no longer relevant because that former regulatory regime no longer exists. OPAE asserts that customers are no longer responsible for financing the generation owned by any utility; rather, they are responsible only for paying for generation at a price set through the market or an ESP. OPAE notes that no provision was made in ESP 1 for the recovery of extraordinary costs such as for the early closure of a plant. In response, OP contends that SB 221 imposed a hybrid form of re-regulation, which includes cost-based rate adjustments in an ESP that are more akin to single issue ratemaking using traditional regulatory principles.

(23) Like Staff, OPAE also points to the fact that retail electric generation is a competitive retail electric service under Section 4928.03, Revised Code, and argues that charging customers for OP's business decision to close Sporn Unit 5 would run afoul of the prohibition against anticompetitive subsidies found in Section 4928.02(H), Revised Code.

(24) Finally, OPAE argues that OP has already been compensated for plant closure costs by way of its recovery of regulatory transition costs during the market development period.

OMAEG

(25) In its comments, OMAEG asserts that OP does not cite any legal authority that would permit recovery of plant closure costs. With respect to OP's argument that Sporn Unit 5 has served ratepayers during the life of the asset and that it would thus be unreasonable to require shareholders to absorb the closure costs, OMAEG states that this argument may be

appropriate under cost-based regulation but that such regulation no longer determines generation rates.

(26) OMAEG also argues that OP has failed to provide evidence of the offsetting positive value of the remainder of its generation fleet, as addressed by the Commission in the ESP 1 Case.[10] Finally, OMAEG contends that OP has been fairly compensated by its customers, citing the Commission's review of the Company's annual earnings for 2009.[11]

OEG

(27) OEG argues that OP cites no statutory provision in support of its request for cost recovery. OEG contends that OP's request to recover depreciation on the undepreciated remainder of Sporn Unit 5 should be denied as it relates to a rate base and regulatory regime that no longer exist. OEG notes that ESP 1 was approved without regard to cost of service.

(28) OEG further asserts that Sporn Unit 5 does not represent a stranded cost for which OP should be compensated and that the time for recovery of such costs is past. OEG believes that OP's attempt to recover the undepreciated value of Sporn Unit 5 from ratepayers is inconsistent with the stipulation in the Company's electric transition plan case, pursuant to which OP agreed that it would not impose lost generation charges on switching customers during the market development period.[12] OEG also maintains that the plant closure costs are generation costs, which should thus not be assessed to shopping customers. In its reply comments, FES agrees with OEG on these points.

---

10 ESP 1 Order at 53.

11 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order (January 11, 2011), at 22-23.

12 *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case No. 99-1729-EL-ETP, *et al.*, Opinion and Order (September 28, 2000), at 15-18.

(29) Finally, OEG argues that, if OP is permitted to recover plant closure costs, the Commission will have established a poor precedent that other electric utilities will seek to rely on and that utility rates and shopping will be adversely affected.

OCC

(30) OCC argues that OP should not be permitted to recover plant closure costs because such costs are not recoverable under an ESP. OCC points out that Section 4928.143(B)(2), Revised Code, does not authorize recovery of closure costs for plants that existed before SB 3 was enacted. Additionally, OCC asserts that OP is not entitled to recovery of such costs based on its receipt of regulatory asset transition revenues pursuant to Sections 4928.38 and 4928.40, Revised Code, which more than fully compensated the Company for closure costs of uneconomic plants. OCC maintains that, in receiving transition revenues, OP has forgone any cost recovery after the market development period, which has now ended.

(31) As an additional ground for denying recovery of plant closure costs, OCC states that OP retains, pursuant to ESP 1, all of the profits from off-system sales associated with its nonjurisdictional units, such as Sporn Unit 5, which benefits its shareholders. OCC further argues that OP should show that the value of the rest of its fleet does not offset the loss associated with Sporn Unit 5 before it is permitted to collect closure costs, as addressed by the Commission in the ESP 1 Case.[13] In its reply comments, FES agrees with OCC that OP should offset its profits from its generation fleet and off-system sales. OP responds, however, that OCC improperly attempts to adjust the balance achieved by the package deal adopted in the ESP 1 Order.

(32) Finally, OCC points out that, even if OP were requesting recovery of plant closure costs during the cost-of-service regulatory regime that existed prior to SB 3, it would be unlikely that such cost recovery would be permitted pursuant to Section 4909.15(A), Revised Code, given that Sporn Unit 5 is

---

[13] ESP 1 Order at 53.

no longer used and useful. OCC notes that the Commission rarely permitted utilities to collect plant closure costs under cost-of-service ratemaking. OP replies that traditional, cost-based regulation principles support its recovery of early plant closure costs. Under such principles, OP contends that, in order to recover any net book value, including additions, on retired property, the net book value of the retired asset, which is included in accumulated depreciation, is included in the next depreciation study in the next rate case and recovered in future rates. OP notes that it is a routine matter of utility accounting and ratemaking that plant-in-service is retired and replaced. OP argues that the Commission should follow these established regulatory accounting and ratemaking principles and authorize recovery of its early plant closure costs.

(33) In its supplemental comments, OCC argues that the Supreme Court of Ohio recently held that, pursuant to Section 4928.143(B)(2), Revised Code, an ESP may include only the items listed in the section.[14] In light of this decision, OCC contends that OP's request for recovery of plant closure costs should be denied, as such costs are not listed within the section. In their reply comments, FES, OPAE, and IEU-Ohio agree with OCC. IEU-Ohio notes that OP has identified no provision under Section 4928.143(B)(2), Revised Code, that allows recovery of plant closure costs. OP responds that the Court's decision cannot be retroactively applied to modify a portion of the ESP 1 Order that was not challenged on rehearing and appeal. According to OP, neither OCC nor the Commission can use the Court's limited remand with respect to the allowance of environmental carrying charges under Section 4928.143(B)(2), Revised Code, to open up other aspects of ESP 1, which were not the subject of rehearing and appeal.

IEU-Ohio

(34) IEU-Ohio comments that neither SB 221 nor ESP 1 provides a basis for cost recovery. Specifically, IEU-Ohio points out that Section 4928.143, Revised Code, provides no legal basis for recovery of plant closure costs. Regarding the ESP 1 Order,

---

14 *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St.3d 512.

IEU-Ohio states that, although the Commission offered OP the opportunity to request recovery of plant closure costs, the Commission did not address in the order whether such costs are in fact recoverable. IEU-Ohio argues that, even under cost-of-service regulation, OP's request would be denied pursuant to Section 4909.15(A), Revised Code, because Sporn Unit 5 is not used and useful.

(35) IEU-Ohio further asserts that OP's right to recover stranded costs is long over and that the Company agreed to forgo recovery of stranded generation costs during the market development period pursuant to the stipulation in its electric transition plan case.[15]

(36) Finally, IEU-Ohio contends that OP has failed to show an economic basis for recovery of its closure costs. Although OP reports that Sporn Unit 5 is being operated at a loss, IEU-Ohio notes that the Company does not argue that these operational losses are causing financial distress, nor could it successfully make such an argument given the Commission's review of its annual earnings for 2009.[16]

OEC

(37) OEC argues that recovery of plant closure costs should only be permitted if the generation will be replaced with energy efficiency or alternative energy resources and that cost recovery in the amount requested may not be appropriate if the shutdown of Sporn Unit 5 does not produce air quality or other consumer and environmental benefits.

(38) In response, OP states that it is illogical to presume, from a resource planning perspective, that an equal amount of capacity will need to be replaced upon the retirement of Sporn

---

15 *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case No. 99-1729-EL-ETP, *et al.*, Opinion and Order (September 28, 2000), at 15-18.

16 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order (January 11, 2011), at 22-23.

Unit 5. OP contends that the retirement of a given amount of megawatts of capacity does not automatically mean replacement of the same amount of megawatts during the immediate timeframe of the retirement, given that projected load growth or decline is a major factor that drives the need for new capacity. Further, OP argues that it is unreasonable to condition recovery of plant closure costs on the deployment of an equal amount of new alternative energy resource capacity.

Sierra Club

(39) Sierra Club notes that it supports the accelerated closure of Sporn Unit 5, but questions how a 50-year-old plant continues to carry unamortized debt for which ratepayers are responsible.

Conclusion

The Commission has reviewed OP's application, as well as the comments, supplemental comments, and reply comments filed by the parties and Staff. First, OP requests that the Commission approve the closure of Sporn Unit 5 to the extent such approval is required by Sections 4905.20 and 4905.21, Revised Code. Upon consideration of this request, the Commission concludes that the closure of Sporn Unit 5 is not subject to our approval. Pursuant to Sections 4928.03 and 4928.05(A)(1), Revised Code, retail electric generation service is a competitive retail electric service and, therefore, not subject to Commission regulation, except as otherwise provided in Chapter 4928, Revised Code. Just as the construction and maintenance of an electric generating facility are fundamental to the generation component of electric service,[17] we find that so too is the closure of an electric generating facility. Additionally, although there are exceptions in Section 4928.05(A)(1), Revised Code, that permit Commission regulation of competitive services in some circumstances, the enumerated statutory exceptions do not include Sections 4905.20 and 4905.21, Revised Code, which otherwise govern applications to abandon or close certain facilities.

---

[17] *Indus. Energy Users-Ohio v. Pub. Util. Comm.* (2008), 117 Ohio St.3d 486 (finding that the classification of a proposed electric generation facility as a distribution-ancillary service, rather than a generation service, was contrary to law).

Further, although Section 4928.17(E), Revised Code, expressly prohibits the sale or transfer of any generating asset owned by an electric distribution utility in the absence of prior Commission approval, we find no similar provision in Chapter 4928, Revised Code, with respect to the closure of generating assets. Accordingly, the closure of Sporn Unit 5 is not subject to approval by the Commission and we thus decline to rule on OP's request for approval of the plant shutdown.

(40) OP also requests approval of a rider to collect the costs associated with the closure of Sporn Unit 5. As discussed above, Section 4928.05(A)(1), Revised Code, generally prohibits Commission regulation of retail electric generation service. However, that section expressly provides that it does not limit the Commission's authority under Sections 4928.141 to 4928.144, Revised Code. Pursuant to one such section, specifically Section 4928.143(B), Revised Code, the Commission is authorized to approve an ESP, which must contain provisions relating to the supply and pricing of electric generation service and may include certain other components. Pursuant to that section, the Commission approved ESP 1 for 2009 through 2011, and recently approved OP's new ESP that took effect on January 1, 2012.[18]

In the ESP 1 Order, we approved OP's request to come before the Commission to determine the appropriate treatment for accelerated depreciation and other net early closure costs in the event the Company finds it necessary to close a generation plant earlier than otherwise expected, as is the case with Sporn Unit 5.[19] In its application and reply comments, OP argues that the Commission specifically contemplated the Company's recovery of early closure costs in the ESP 1 Order. The Commission disagrees. Although we approved OP's request for authority to come before the Commission during the term of ESP 1 to determine the appropriate treatment for accelerated depreciation and other net early closure costs, nothing in the

---

18 *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order (December 14, 2011).

19 ESP 1 Order at 52-53.

ESP 1 Order contemplated the Company's recovery of early closure costs or passed upon the legality of such costs, as OP suggests. Rather, the Commission only approved what the Company requested, which was essentially to postpone the issue and address it in a future application.

Having now reviewed that application and the comments in the present case, the Commission finds that there is no statutory basis upon which to grant recovery of the closure costs for Sporn Unit 5. As Staff and most of the intervenors note, the costs associated with the closure of Sporn Unit 5 do not fall within any of the provisions of Section 4928.143, Revised Code. Although OP implies that a broad interpretation of Section 4928.143(B)(2)(c), Revised Code, is warranted, that section provides for the establishment of a nonbypassable surcharge for the life of an electric generating facility, only if certain criteria are met. Upon consideration of these criteria, we find that Section 4928.143(B)(2)(c), Revised Code, does not authorize recovery of costs associated with the closure of Sporn Unit 5. Sporn Unit 5 was constructed long ago and, therefore, was not newly used and useful on or after January 1, 2009, as required by the statute. Neither was Sporn Unit 5 sourced through a competitive bid process or subject to a determination of need by the Commission, which are additional criteria found in Section 4928.143(B)(2)(c), Revised Code.

Although Section 4928.143(B)(2)(c), Revised Code, provides that the Commission may consider the effects of any decommissioning, deratings, and retirements, the Commission is permitted to do so only before a surcharge is authorized pursuant to that section, rather than under any circumstances. We agree with OP that the nonbypassable surcharge authorized in Section 4928.143(B)(2)(c), Revised Code, is a way in which to encourage construction of new generating capacity in the state, and that the entire investment cycle, including retirement, is important. We cannot agree, however, that any provision of Section 4928.143, Revised Code, authorizes recovery of the closure costs for Sporn Unit 5, or that the only determination for the Commission to make with respect to a proposed ESP is whether it is more favorable in the aggregate

than the expected results of a market rate offer. The Commission must also determine whether the costs to be recovered under the ESP are authorized by statute.[20] With respect to the closure costs for Sporn Unit 5, we find no statutory basis within Section 4928.143, Revised Code, or anywhere else in the Revised Code.

Additionally, the Commission notes that OP's recovery of the closure costs would be contrary to the state policy found in Section 4928.02(H), Revised Code. That policy requires the Commission to avoid subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service. OP seeks to establish a nonbypassable charge that would be collected from all distribution customers by way of the PCCRR. Approval of such a charge would effectively allow the Company to recover competitive, generation-related costs through its noncompetitive, distribution rates, in contravention of the statute. Accordingly, we find that OP's request for cost recovery should be denied.

(41) In light of the Commission's finding that the closure of Sporn Unit 5 is not subject to our approval, and that there is no statutory basis for recovery of the closure costs, we find no need to hold a hearing in this matter and conclude that OP's application should be dismissed.

It is, therefore,

ORDERED, That the motions to intervene filed by various parties be granted. It is, further,

ORDERED, That the motions for admission *pro hac vice* filed on behalf of David C. Rinebolt and Holly Rachel Smith be granted. It is, further,

ORDERED, That OCC's motion for leave to file supplemental comments *instanter* be granted. It is, further,

ORDERED, That OP's application be dismissed. It is, further,

---

20 *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St.3d 512.

ORDERED, That a copy of this finding and order be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

SJP/sc

Entered in the Journal

JAN 11 2012

Betty McCauley

Betty McCauley
Secretary