

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company for)
Approval of a Mechanism to Recover) Case No. 11-4920-EL-RDR
Deferred Fuel Costs Ordered Under Section)
4928.144, Ohio Revised Code.)

In the Matter of the Application of Ohio)
Power Company for Approval of a)
Mechanism to Recover Deferred Fuel Costs) Case No. 11-4921-EL-RDR
Ordered Under Section 4928.144, Ohio)
Revised Code.)

ENTRY

The Commission finds:

- (1) Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company)¹ are public utilities and electric light companies within the definitions of Sections 4905.02 and 4905.03(A)(3), Revised Code, and, as such, are subject to the jurisdiction of this Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On March 18, 2009, the Commission issued its opinion and order regarding the application of CSP and OP for an electric security plan (ESP) in Case No. 08-917-EL-SSO and 08-918-EL-SSO (ESP 1 Order). Entries on rehearing were issued on July 23, 2009 (First ESP 1 Entry on Rehearing) and November 4, 2009. In the ESP 1 Order, the Commission directed AEP-Ohio, pursuant to Section 4928.144, Revised Code, to phase-in a portion of the rate increase authorized over an established percentage for each year of the ESP, in order to mitigate the impact of the rate increase for

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

customers.² The Commission authorized AEP-Ohio to establish a regulatory asset to record and defer fuel expenses with carrying costs, at the weighted average cost of capital, with recovery through a nonbypassable surcharge to commence in 2012 and continue through 2018.³ The ESP 1 Order was appealed to the Ohio Supreme Court and subsequently remanded to the Commission for further proceedings.

- (3) On September 1, 2011, AEP-Ohio filed an application for approval of a mechanism to recover its deferred fuel costs, as directed by the Commission in the ESP 1 Order. Specifically, AEP-Ohio requested approval of the creation of a recovery mechanism, in the form of a nonbypassable phase-in recovery rider (PIRR), to ensure recovery of its accumulated deferred fuel costs, including carrying costs, as approved by the Commission in the ESP 1 Order.
- (4) On October 3, 2011, the Commission issued an order on remand (ESP 1 Remand Order), addressing the Ohio Supreme Court's remand of the ESP 1 Order. The ESP 1 Remand Order was subsequently appealed to the Ohio Supreme Court by the Ohio Consumers' Counsel (OCC) and Industrial Energy Users-Ohio.
- (5) On August 1, 2012, the Commission issued a finding and order that approved AEP-Ohio's proposed PIRR, with certain modifications, and directed the Company to file tariffs consistent with the finding and order and subject to final review and approval by the Commission.
- (6) On August 8, 2012, AEP-Ohio filed, in final form, four complete copies of its proposed tariffs to implement the PIRR.
- (7) On August 10, 2012, OCC filed a motion seeking a stay of AEP-Ohio's collection of the PIRR rates. On August 17, 2012, AEP-Ohio filed a memorandum contra OCC's motion.

² ESP 1 Order at 22-23.

³ ESP 1 Order at 20-23; First ESP 1 Entry on Rehearing at 6-10.

- (8) In its motion, OCC argues that a stay is necessary in order to prevent irreparable harm to AEP-Ohio's customers during the pending appeal of the ESP 1 Remand Order. OCC asserts that, on a dollar-for-dollar basis, the deferred fuel costs were overvalued by approximately \$367 million, plus carrying charges, in the form of unjustified provider of last resort (POLR) charges that were collected from customers from April 2009 through May 2011, and have now been approved for collection from customers through the PIRR.

OCC states that the Commission has favored a four-factor test in determining whether to grant a stay and that the test is met by OCC under the present circumstances. OCC claims that there is a strong likelihood that its appeal of the ESP 1 Remand Order will prevail on the merits; the PIRR rates would cause irreparable harm to AEP-Ohio's customers; a stay would further the public interest; and a stay would not cause substantial harm to the Company.

- (9) In response to OCC's motion, AEP-Ohio argues that OCC has not demonstrated that it has a strong likelihood of success on the merits or that irreparable harm would result in the absence of a stay. According to AEP-Ohio, neither has OCC shown that its request for a stay is in the public interest or that a stay would not cause substantial harm to other parties. AEP-Ohio contends that OCC admits that the basis for its stay request is its appeal of the ESP 1 Remand Order, which the Company notes was issued in a different case involving separate issues from the present proceedings. AEP-Ohio also asserts that the Commission has already rejected OCC's arguments regarding the flow through effects related to the rejection of the Company's POLR charge. AEP-Ohio urges the Commission to uphold its prior orders and deny OCC's motion.
- (10) Upon review of OCC's motion for stay and the responsive pleading, the Commission finds that the motion should be denied. The Commission is not persuaded that the extraordinary remedy of a stay is justified under the circumstances of these proceedings, and cannot find that OCC has demonstrated that the four-factor test governing a stay request has been met. The Commission continues to

believe that OCC seeks adjustments to AEP-Ohio's deferred fuel expenses that would be tantamount to unlawful retroactive ratemaking. OCC has raised no issue in its motion that the Commission has not previously considered. The Commission finds no legal support for OCC's claim that there is a reasonable possibility that the Ohio Supreme Court will reverse or remand the ESP 1 Remand Order. The Commission, therefore, finds that OCC has not demonstrated that it is likely to prevail on the merits. As OCC has not satisfied the first part of the four-factor test, the Commission finds no need to address the remainder of the test. However, we note that, as in any case before the Commission, OCC has all rights afforded under Title 49, Revised Code, including the right to file an application for rehearing pursuant to Section 4903.10, Revised Code. The Commission will consider any issue raised by OCC in an application for rehearing. In this entry, we find only that no reason has been presented by OCC at this time to warrant a stay of our August 1, 2012, finding and order or implementation of AEP-Ohio's proposed tariffs.

- (11) The Commission further finds that AEP-Ohio's proposed tariffs, as filed on August 8, 2012, implementing our August 1, 2012, finding and order approving the PIRR, with modifications, are reasonable and consistent with that order. Accordingly, the PIRR rates should be approved and implemented to take effect with bills rendered as of the first billing cycle in September 2012.

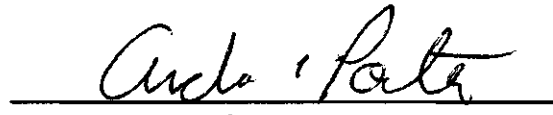
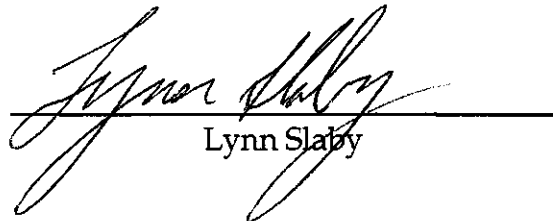
It is, therefore,

ORDERED, That the motion for stay filed by OCC on August 10, 2012, be denied.
It is, further,

ORDERED, That the proposed tariffs filed by AEP-Ohio on August 8, 2012, be approved and effective for bills rendered beginning with the first billing cycle of September 2012. It is, further,

ORDERED, That a copy of this entry be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
Steven D. Lesser
Andre T. Porter
Cheryl L. Roberto
Lynn Slaby

SJP/sc

Entered in the Journal
AUG 22 2012



Barcy F. McNeal
Secretary