

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company For)
Approval of its Electric Security Plan)
Including Related Accounting Authority;)
an Amendment to its Corporate)
Separation Plan; and the Sale or Transfer)
Certain Generating Assets)

and)

In the Matter of the Application of)
Ohio Power Company for Approval of)
its Electric Security Plan Including)
Related Accounting Authority; and an)
Amendment to its Corporate Separation)
Plan)

Case No. 08- 917-EL-SSO

Case No. 08-918-EL-SSO

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**MEMORANDUM CONTRA OF
COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY
TO THE MOTION TO STAY NEGOTIATIONS**

Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, the "Companies" or "AEP Ohio") each filed an initial application for approval of an electric security plan (ESP) under §4928.143, Ohio Rev. Code, on July 31, 2008. Among other things, the ESPs will establish standard service offers for competitive retail electric services, including generation service, beginning January 1, 2009. Pursuant to paragraph (C)(1) of §4928.143, the Commission must issue an order ruling on an initial application for an ESP not later than one hundred fifty days after the application is filed. For the Companies' ESP applications, that date is December 28, 2008.

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There is a multitude of parties participating in these proceedings. At last count, there were 23 intervenors (including several multi-entity intervenors) in addition to the Staff. Extensive and wide-ranging discovery of the Companies' applications has been ongoing for over two months, and the hearings are fast approaching. In light of the variety of issues, the number of parties involved, and the requirement that the Commission rule upon the applications promptly, the Companies concluded that they should initiate settlement discussions. The parties have had one general discussion on September 25, and have scheduled another session for Friday, October 10. For the settlement discussions to have a reasonable chance of success, the Companies believe that they must proceed on a regular basis and with a sense of the urgency commensurate with the statutory time frame governing this proceeding.

Remarkably, a group of intervenors, including the Office of the Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAEE), Appalachian People's Action Coalition (APAC), the Sierra Club Ohio Chapter (Sierra Club), and the Natural Resources Defense Council (NRDC) (together, the "Movants") filed a joint motion on October 1, 2008, asking the Commission to stay all parties' efforts to discuss settlement until November 10. The Movants contend that not halting settlement discussions would cause them irreparable harm. The gist of their concern is that they are not ready to discuss settlement, and until they are ready, no one else should be permitted to do so.

While it is not apparent that the Commission even has authority to grant this motion, the short answer to the stay request is that the Movants may participate in settlement discussions whenever they are ready. When that time comes, the Companies will welcome the opportunity to discuss settlement with them regarding matters that are of interest to them individually or as part of more general discussions. Meanwhile, the Companies are open to working with Movants,

collectively or individually, as soon as they are ready to participate in the settlement process. Until then, each of the Movants is welcome to attend settlement meetings and monitor the progress that the other parties make. However, Movants should not be permitted to preclude other willing parties from discussing areas of common ground that could provide the basis for settlement.

Below are brief responses to the individual arguments that the Movants make in support of their request that the Commission should stay the settlement discussions between the Companies and all other parties.

Movants' initial argument is that the Commission has the statutory authority and the obligation to stay settlement negotiations in AEP Ohio's ESP proceedings. They contend that they are not prepared for settlement discussions because they haven't done enough discovery or had enough time to analyze the Companies' applications. This argument is not persuasive. First, none of the statutory provisions that Movants attempt to rely upon authorize the Commission to forbid one party to a proceeding from discussing with one or more other willing parties whether they have common ground for settling their differences. Second, discovery and further analysis of the applications may continue, by parties to the settlement discussions and by those parties not willing to discuss settlement, even while settlement discussions are ongoing. Settlement discussions do not stop discovery or analytic activities by any party. Accordingly, settlement discussions cause no jeopardy to Movants' discovery rights or their ability to further analyze the applications. So, even if the Commission could forbid settlement discussions, Movants provide no rationale for doing so.

Movants' second argument is that settlement discussions cannot occur until after the various rulemakings currently underway are completed and the resulting rules are effective. This

argument is also meritless. Neither the schedule for the initial round of ESP cases nor any settlement discussions seeking to resolve them (or portions of them) can be put off until one or another of the rulemaking proceedings that Movants' cites is completed. Movants' position is really that the entire proceeding, not just settlement discussions regarding the proceeding, should be delayed until the rulemakings reach a stage of completion satisfactory to Movants. But the 150-day clock for the initial ESP cases applies to AEP Ohio's applications, regardless of whether the rulemakings have progressed as far as Movants would like. The Commission may not simply ignore that deadline, which is the effect of Movants' request. Moreover, §4928.143(A) provides that, in the event the utility files its application before the rules that implement the ESP requirements become effective, the utility may conform its filing to the rules upon their taking effect, and even then the utility is only required to do so to the extent the Commission determines necessary. Accordingly, SB. 221 specifically provides that there is no need to put off the schedule for processing these initial ESP cases on the basis that one or another of the rulemakings is still ongoing.

Movants' final argument, that allowing settlement negotiations to proceed before it has exhausted its discovery plans and completed its related analyses somehow violates its due process rights, is also without basis. It is baseless because, as noted above, nothing, including ongoing settlement discussions, keeps Movants from doing all of the lawful discovery that they desire to do. Notably, Movants do not contend that AEP Ohio has failed to cooperate in the discovery process or that AEP is refusing to provide information to Movants. Further settlement discussions will not affect Movants' rights to conduct discovery. Moreover, participation in settlement discussions is a voluntary choice and no party is required to participate or agree to proposed settlement terms.

Movants' motion is based on the proposition that settlement negotiations cannot occur between *any* parties until Movants are ready to have them. There is no basis for one party in a multi-party proceeding to assert a legal right to veto the efforts of all other parties to settle their differences. Movants' request for a stay should be denied.

October 6, 2008

Respectfully submitted,



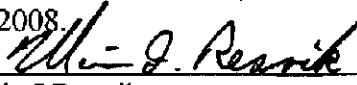
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Motion to Stay Negotiations was served by electronic mail upon the individuals listed below this 6th day of October, 2008.


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