

**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 of Certain )  
Generating Assets )

Case No. 08-917-EL-SSO

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. 08-918-EL-SSO

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**INTEGRYS ENERGY SERVICES, INC.'S  
BRIEF IN SUPPORT OF PROTECTING PARTICIPANTS IN  
PJM DEMAND RESPONSE PROGRAM THROUGH AN INTERIM PLAN**

**I. INTRODUCTION**

Integrys Energy Services, Inc. ("Integrys") respectfully submits that a critical component to the adoption of an interim plan or extension of current rates is the recognition that Ohio retail customers currently have, and will have during the interim period, firm contractual and tariff commitments relating to PJM's demand response programs. Columbus Southern Power ("CSP") and Ohio Power Company ("OPC") retail customers are, and will be, participating in PJM demand response programs as follows:

1. CSP and OPC retail customers have existing firm contractual and tariff commitments to PJM demand response programs through the ongoing 2008-2009 PJM Planning Period that ends May 31, 2009 (the, "08-09 Planning Period").

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2. Additionally, starting January 5, 2009, during the period covered by any interim plan, CSP and OPC retail customers will have firm contractual and tariff commitments to PJM demand response programs for the 2009-2010 PJM Planning Period ending May 31, 2010 (the, "09-10 Planning Period").

Given the likely duration of the interim plan, it is critical that the Commission provide certainty to Ohio retail customers that their commitments to PJM and relating to the PJM demand response programs will be honored. The Commission can do this by including in any order adopting an interim plan the following affirmative findings:

1. That customers may continue to participate in PJM demand response programs as currently permitted, until a finding is issued on the underlying issue of CSP and OPC's proposal to bar participation in PJM demand response programs; and,
2. That customers currently committed to participate in PJM programs for the 08-09 Planning Period, as well as those that commit to participate in the 09-10 Planning Period starting January 5, 2009, will be entitled to honor their commitments through the 09-10 Planning Period, notwithstanding any adverse final determination on the underlying proceeding with regard to CSP and OPC's proposal to bar participation in the PJM demand response programs.

The foregoing findings by the Commission would comport with Commission policies of providing for: (i) regulatory certainty; and, (ii) preventing against the retroactive application of Commission regulation. Failure by the Commission to provide this certainty and protect against retroactive regulation during the Interim Plan period would result in the unjust and reasonable outcomes of subjecting CSP and OPC retail customers to the risk of default relating to the PJM demand response programs, have a

chilling effect on participation in the 09-10 Planning Period and adversely affect PJM's operational planning and flexibility by denying PJM access to over 500 megawatts of demand response load for purposes of maintaining grid reliability and stability – all without determination on the underlying issue of whether participation should be barred.

## **II. BACKGROUND**

On July 31, 2008, CSP and OPC filed an Electric Security Plan (“ESP”) in accordance with the requirements of Sections 4928.141 and 4928.143, Revised Code. As part of that Application, CSP and OPC in Section V.E. provided for an interim plan which would establish post Rate Stabilization authorized rates consisting of the current rates and service terms plus an ESP rider (the “CSP and OPC Interim Plan”). The new ESP rider would be applicable to all tariff services and would capture the revenue which CSP and OPC would have otherwise earned had the long term ESP rates – when finalized – been made applicable as of the start of the ESP period on January 1, 2009. The CSP and OPC Interim Plan is silent as to customer participation in PJM demand response programs; however, CSP and OPC witness Mr. Baker took the unduly unreasonable position of recommending that if the Commission ultimately determined to bar participation in PJM demand response programs, that such a bar should apply retroactively putting customers committed to PJM demand response programs at risk of default.

On November 10, 2008, Staff, via the Direct Prepared Testimony of J. Edward Hess, proposed an alternative to the Interim Proposal, to take effect on January 1, 2009, referred to as the January 1, 2009 Alternative (the “Alternative Plan”). Unlike the CSP and OPC Interim Plan, under the Alternative Plan when a long term ESP order is issued

by the Commission there will be no true-up or other retroactive revenue adjustment. The Alternative Plan is also silent as to customer participation in PJM demand response programs; although, Staff witness Mr. Hess testified that silence by Staff as to this issue was not intended to indicate a bar against participation in PJM demand response programs nor an opposition to protecting customer commitments relating to participating in PJM programs during any interim plan.

### **III. ARGUMENT**

#### **A. For the interim plan period, the Commission should ensure that customer commitments relating to PJM demand response programs can be honored for the duration of the commitment.**

As noted above, neither the CSP and OPC Interim Plan nor the Alternative Plan proposed by Mr. Hess address the existing and future customer commitments to the PJM demand response programs. However, it is critical that the Commission recognize and preserve: (1) current PJM demand response program participation for the 08-09 Planning Period; and, (2) customer commitments to PJM demand response programs for the 09-10 Planning Period starting January 5, 2009, during the interim plan period.

The importance of this issue is magnified by the fact that CSP and OPC customers today are actively participating and committing to PJM demand response programs. As the record demonstrates, at present there is no prohibition on the participation of CSP and OPC retail customers in the PJM demand response programs.<sup>1</sup> Customers are presently participating in these programs, and specifically as to the PJM Interruptible Load for Reliability Program (the "ILR Program"), will be committing themselves to PJM for the 09-10 Planning Period as early as January 5, 2009, through March 2, 2009. It is important that the Commission note that under the ILR Program, PJM includes loads of

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<sup>1</sup> Rebuttal Testimony of Samuel R. Wolfe at p. 2.

committed customers in its operations plan as soon as a customer commits.<sup>2</sup> Moreover, customers committing to participate in PJM demand response programs, such as the ILR program, have to make operational commitments and may have to invest in measurement and verification equipment, controls, and communication equipment.<sup>3</sup> Hence, the record is clear that CSP and OPC retail customers are actively planning for and participating in PJM demand response programs.

The procedural timing of this Application also magnifies the issue of customer commitments relating to the PJM demand response programs. As of this date, the last of the direct witnesses has yet to take the stand. It appears likely that there will be rebuttal witnesses on the Long Term ESP program, followed by Trial and Reply briefs. Hence, it is highly probable that the Application will not be decisional until early February. Further, following a Commission decision, in late early February, a decision for appeal would not be available for an additional thirty (30) days, to allow for the statutorily mandated period for rehearing petitions.<sup>4</sup> Following that, appeals to the Ohio Supreme Court, are likely to remain pending until the latter part of 2009. In sum, it is clear that a final order, with all appeals exhausted, will not be available until well after the commitment period (January 5 through March 2, 2009) for the PJM ILR program closes and well into the 09-10 Planning Period.

The timing of the prosecution of the Application and its conclusion to a non-appealable final order raises significant issues of contractual certainty, commitments to tariff obligations, and operational planning and certainty for PJM. First, without any protection from the Commission, customers who have committed to participate in PJM

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<sup>2</sup> Rebuttal Testimony of Samuel R. Wolfe at p. 3.

<sup>3</sup> *Id.* at p. 4.

<sup>4</sup> Section 4903.10, Revised Code

demand response programs for the 08-09 Planning Period and the 09-10 Planning Period are at material risk of default to PJM and other contractual obligations if such customers are retroactively prohibited from completing their commitments relating to the PJM demand response programs. Customers could lose the value of their investments in the metering and communication assets installed to satisfy their commitments to PJM if they are not permitted to receive the value of their participation in the PJM demand response programs.<sup>5</sup>

Significantly, to the detriment of Ohio consumers and PJM as well, the lack of regulatory certainty provided in the interim plan with regard to participation in PJM demand response programs will likely chill customer participation in those programs, without the Commission having made any determination of the underlying issue of whether or not to reject the proposal to bar participation. The record in these proceedings demonstrates that CSP and OPC customer participation in the ILR program for the 08-09 Planning Period provides more than 500 MW of demand response that PJM can call on to interrupted if needed to maintain grid reliability. Notwithstanding CSP and OPC witness Baker's dismissal of this load as being irrelevant, the record demonstrates that 500 MW is the equivalent of a medium-sized power plant being available for supply and reliability purposes on the transmission system. Additionally, the demand response load is located across the CSP and OPC zone where PJM can access it on a localized basis to address local constraints and failures. In all this load could very well be the difference between PJM maintaining grid reliability and grid failure in the event of an emergency, and the Commission should not allow it to be dismissed during the interim plan period without a

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<sup>5</sup> Rebuttal Testimony of Samuel R. Wolfe, p. 4.

full consideration of the underlying issues relating to barring or allowing participation in PJM programs.

Even CSP and OPC agree that Ohio retail customers should be allowed to honor commitments made to PJM for the 08-09 planning year.<sup>6</sup> However, incredulously, CSP and OPC believe that customers committing to PJM demand response programs for the 09-10 planning year do so at their own risk.<sup>7</sup> CSP and OPC's recommendation (by CSP and OPC witness Mr. Baker) is that customers should be at risk if they commit to the 09-10 Planning Period or not commit to PJM demand response programs for the 09-10 Planning Period even though the Commission has not made any determination relating to the proposal to bar participation in the PJM demand response programs.<sup>8</sup> As stated by CSP and OPC witness Mr. Baker:

I would suggest that the customers not sign up and that they wait until there is an order, either on an interim basis or on a final order, that either permits them to go forward in these kind of programs or precludes it. That would be the recommendation I would make to customers.<sup>9</sup>

Such a recommendation is unduly unreasonable, logically inconsistent, and will depress demand response participation without a Commission determination on the underlying issue of barring participation. First, the CSP and OPC recommendation is logically inconsistent in that CSP and OPC agree that the 08-09 Planning Period commitments should be honored because the Commission has not decided whether to ban participation, but that commitments to the 09-10 Planning Period commitments made prior to the Commission decision should not be honored. Also, CSP and OPC witness Mr. Baker's recommendation clearly will not create certainty as to PJM demand response

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<sup>6</sup> See Vol. I, pp. 3.

<sup>7</sup> *Id.* at p. 4.

<sup>8</sup> *Id.* at pp. 4-5.

<sup>9</sup> *Id.*

program participation, the net effect of which will be a chilling effect on program participation. Furthermore, Mr. Baker's recommendation is unduly unreasonable because it would violate the important Commission policy of not retroactively applying Commission regulation by having customers risk default for commitments made prior to any Commission determination, if any, that would bar participation in PJM demand response programs. *See Lucas County Commissioners v. Public Utilities Commission of Ohio* (2007), 80 Ohio St. 3d 344, 686 N.E.2d 501 ("In short, retroactive ratemaking is not permitted under Ohio's comprehensive statutory scheme) *and see Sandusky Marina Limited Partnership v. Ohio Department of Natural Resources* (1998), 126 Ohio App.3d 256, 263, 710 N.E.2d 302, 306 (attempted adjustment of lease by regulation was unconstitutional retroactive application of regulation and violative of Section 28, Article II of the Ohio Constitution).

CSP and OPC also suggested during their cross-examination of Integrys witness Mr. Wolfe that customers should refrain from committing until just before the end of the commitment period in the event the Commission issues a decision on the issue of whether or not to reject the proposal to bar participation in PJM demand response programs. Such an argument lacks merit not only because it is presumptuous of CSP and OPC to have assumed as a foregone conclusion that the Commission will grant its proposal to bar participation, but also lacks merit because it ignores the reality of PJM commitments and customer action in the marketplace. Indeed, while a customer is committed to PJM upon the submittal, PJM has the option of modifying or rejecting the request for participation in its programs subject to its verification process.



As the record demonstrates, customers must commit to PJM at least two weeks prior to the March 2, 2009 deadline to ensure that PJM can verify the commitment prior to the deadline. Otherwise, if PJM reviews and rejects the commitment after the March 2, 2009 deadline, it will be too late for the customer to submit a corrected commitment to participate in the 09-10 Planning Period. Due to the attractiveness of the programs, customers are simply not going to wait until the last minute to commit, despite CSP and OPC's presumptions – nor should they have to – that is the purpose of having regulatory certainty until an issue is fully determined. Moreover, what CSP and OPC suggest is unrealistic because the PJM commitment period is very short, only lasting 8 weeks or 40 business days (up to March 2, 2009). Accounting for the two-week buffer period to ensure a commitment is accepted, only gives a customer 6 weeks or 30 business days (up to February 16, 2009) to prepare and submit a commitment. That is why, as Mr. Wolfe testified, customers will be committing to the PJM programs for the 09-10 planning period as early as January 5, 2009. CSP and OPC's suggestion that customers delay commitment submittals to the last possible minute is not only unduly unreasonable, it makes no sense from a business perspective for customers and from an operational perspective for PJM.

#### **IV. CONCLUSION**

For all reasons detailed above, Integrys respectfully requests that the Commission to uphold the policies of regulatory certainty and preventing the retroactive application of regulation (in the event the Commission prohibits CSP and OPC customers from participating in PJM demand response programs), the Commission should follow the

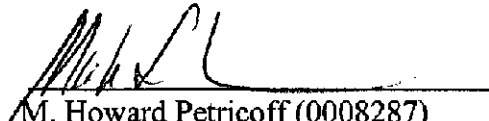
recommendations of Mr. Wolfe. Specifically, Integrys witness Mr. Wolfe recommended that the order approving any interim plan expressly state that:

1. Customers can continue to participate in PJM demand response programs as currently permitted, until a decision is rendered on the underlying issue of whether or not to bar participation in PJM demand response programs; and
2. Customers currently committed to participate in PJM programs for the 08-09 Planning Period and those that commit to participate in the 09-10 Planning Period, starting January 5, 2009, will be entitled to honor their commitments, regardless of any final decision on the underlying proceeding that approves CSP and OPC's proposal to bar participation in the PJM demand response programs.

These directives will ensure regulatory, contractual and operational certainty during the interim plan period. During the interim plan period Ohio customers will continue to reap the benefits of the PJM demand response programs and will have certainty that they will not be hindered in honoring their contractual and tariff commitments relating to the PJM programs; and, just as important, the load committed to PJM demand response programs will be available for reduction in the event of a grid emergency. This is a just and reasonable approach, in accordance with Commission policies, with regard to participation in the PJM programs during the interim plan, while

the Commission fully considers the underlying proposal of barring or allowing participation in the PJM demand response programs.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Howard Petricoff', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Document was served upon the following parties by E-mail or First-Class U.S. Mail this 3rd day of December, 2008.



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