

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 of 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 IN SUPPORT OF THE
MOTION FOR ORDER REQUIRING AEP TO CEASE AND DESIST
BY CONSTELLATION NEWENERGY, INC.**

Now comes Constellation NewEnergy, Inc. ("CNE") who joins in the motion filed February 25, 2009 by Integrys Energy Services, Inc. pursuant to Rule 4901-1-12(C) and Rule 4901-1-12(F) of the Ohio Administrative Code. The motion requested that Columbus Southern Power Company and the Ohio Power Company (collectively "AEP") cease refusing to verify the demand of its Ohio standard service customers. Verification of a retail customer's demand is a required step in the enrollment process for the PJM Interconnection Interruptible Load for Reliability Program ("ILR").

CNE provides electricity and energy-related services to retail customers in Ohio as well as in 15 other states, the District of Columbia and two Canadian provinces and serves more than 15,000 megawatts of load to more than 10,000 customers. Constellation provides such electricity and energy-related services to customers in a variety of different industries including commercial retail, small business, industrial, manufacturing, public sector, and others. As part of its range of energy-related services for retail customers, CNE acts as a curtailment service

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provider ("CSP") for those types of retail customers who wish to participate in regional transmission organization demand response programs. CNE is registered as a CSP with PJM and also holds a certificate as a competitive retail electric supplier from this Commission. CNE currently provides service to retail electric customers in Ohio.

An issue within the matter at bar is AEP's request to amend its tariffs so as to prohibit any of AEP's Ohio standard service customers from enrolling in the ILR program. This request has been opposed by CNE¹, Integrys², the Ohio Energy Group³ and the Industrial Energy Users - Ohio⁴. CNE sponsored expert testimony supporting the view that AEP should not be able to bar its customers from participating in any of the PJM programs. That issue is now decisional before this Commission. In Ohio, a number of commercial, commercial retail, industrial, and manufacturing customers have signed agreements with CNE to participate in the PJM ILR program for the upcoming 2009-10 PJM planning year. Actions taken by AEP over the course of the past week though threaten to make the Commission's decision moot as it relates to the 2009-2010 PJM planning year.

Over the course of the past week, AEP has unilaterally, and without notice to the Commission or the parties in this proceeding, refused to verify the demand of its Ohio standard service customers for purposes of enrolling in the PJM ILR program. Verification of the demand is a step in the PJM enrollment process for the ILR program. Enrollment in the PJM ILR program is limited by time and volume. Thus, by failing to complete the administrative act of verifying the customers' demand AEP has at best delayed and at worst prohibited participation in the PJM ILR program. Further, because of its franchised monopoly authority from the state of

¹ Initial Brief of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., 12/30/08, pp. 20-23.

² Integrys Energy Services, Inc.'s Brief Opposing the Companies' Proposal to Ban PJM Demand Response Participation, p. 2, et seq.

³ Brief of Ohio Energy Group in Long Term ESP, 12/30/08, p. 19.

⁴ Post-Hearing Brief of Industrial Energy Users-Ohio, 12/30/08, p. 29.

Ohio pursuant to Revised Code 4933.81, Revised Code only AEP can be the electric distribution utility serving the customers in its service area. Thus, standard service customers cannot go to another electric distribution utility or load serving entity to verify their demand.

At this time AEP has refused to certify the following Ohio customers to which CNE acts as the CSP: Airgas Merchant Gases, LLC; Amsted Rail Company, Inc.; Cox Enterprises, Inc.; Gander Mountain Company; Hanson Aggregates Davon LLC; TJX Companies, Inc.; and Staples, Inc⁵. AEP should be ordered to cease and desist from enforcing its self imposed ban on standard service customers participating in the PJM ILR and other demand response programs unless and until this Commission so rules. Failure by the Commission to take such action could result in the loss of million of dollars in payments to Ohio customers who wish to continue with or join in the ILR program and possibly making the grid less stabile by barring curtailment service providers like CNE from utilizing their quick response systems set up and designed to quickly remove demand when PJM calls the curtailment service provider to shed load.

Respectfully Submitted,

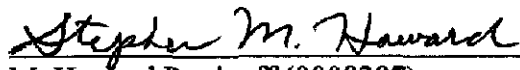


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⁵ The above listed companies have given CNE authority to list them in this pleading. There are additional customers who AEP has refused to verify for the ILR program that are not listed.

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 27th day of February, 2009.



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