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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Columbus )  
Southern Power Company and Ohio Power )  
Company, Individually, and if Their Proposed ) Case Nos. 11-351-EL-AIR  
Merger is Approved, as a Merged Company ) 11-352-EL-AIR  
(collectively, AEP Ohio) for an Increase in )  
Electric Distribution Rates. )

In the Matter of the Application of Columbus )  
Southern Power Company and Ohio Power )  
Company, Individually, and if Their Proposed ) Case Nos. 11-353-EL-ATA  
Merger is Approved, as a Merged Company ) 11-354-EL-ATA  
(collectively, AEP Ohio) for Tariff Approval. )

In the Matter of the Application of Columbus )  
Southern Power Company and Ohio Power )  
Company, Individually, and if Their Proposed ) Case Nos. 11-356-EL-AAM  
Merger is Approved, as a Merged Company ) 11-358-EL-AAM  
(collectively, AEP Ohio) for Approval to )  
Change Accounting Methods. )

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**MOTION TO INTERVENE  
OF FIRSTENERGY SOLUTIONS CORP.**

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Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, FirstEnergy Solutions Corp. ("FES") moves to intervene in these proceedings. FES has a number of real and substantial interests in these proceedings and its interests, which may be prejudiced by the results of these proceedings, are not adequately represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, FES respectfully requests that the Commission grant this request to intervene.

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Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF THE  
MOTION TO INTERVENE OF FIRSTENERGY SOLUTIONS CORP.**

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On January 27, 2011, Columbus Southern Power Company and Ohio Power Company (collectively, the "Companies") filed notice of their intent to seek an increase in distribution rates (the "Distribution Case").<sup>1</sup> On that same day, the Companies filed an Application for approval of their standard-service offer ("SSO") pursuant to R.C. § 4928.143 (the "ESP").<sup>2</sup> The Companies' ESP reveals their intention of continuing the objectionable practice of including

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<sup>1</sup> See Pre-notification of Application to Increase Electric Distribution Rates, filed Jan. 27, 2011.

<sup>2</sup> See *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 § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-0346-EL-SSO and 11-0348-EL-SSO, Application, filed Jan. 27, 2011.

significant generation-based costs in their distribution rates, in contradiction of Ohio law. FirstEnergy Solutions Corp. ("FES"), a competitive retail electric service ("CRES") provider, seeks to intervene in these proceedings in order to insure that the Companies' requested distribution rates do not harm competition in retail electric service in the Companies' service territories.

R.C. § 4903.221 provides that any "person who may be adversely affected by a public utilities commission proceeding" may intervene in the proceeding. The Commission's own rules reinforce the right to intervene:

Upon timely motion, any person *shall be* permitted to intervene in a proceeding upon a showing that . . . [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

O.A.C. 4901-1-11(A) (emphasis added). "The regulation's text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission's rule directs that the Commission should consider: the nature and extent of the intervenor's interest; the legal position advanced by the intervenor and its probable relation to the merits of the case; whether intervention will unduly prolong or delay the proceedings; whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the intervenor's interest is represented by existing parties. *See* O.A.C. 4901-1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). FES's motion to intervene satisfies each of these factors.

FES has a real and substantial interest in this Distribution Case because of the potential effects of the Companies' distribution rates on competitive retail electric service. FES is an owner and operator of electric generating facilities, which provides competitive retail electric service to customers in the Companies' service territories. While typically less affected by distribution rates, FES and other CRES providers are affected when significant and inappropriate generation-related costs are passed on to all customers, including shopping customers, under the guise of distribution rates. The Companies' ESP Application reveals that the Companies propose to include significant and future generation-related costs in distribution charges. In such a scenario, competition in the retail generation market is harmed – through subsidies in favor of one generation supplier over others and a distortion of the price to compare. Therefore, the components and pricing of the Companies' distribution rates will directly impact FES's and other CRES providers' ability to provide competitive service.

FES's ability to protect these real and substantial interests would be impeded or impaired if FES was not allowed to intervene. Indeed, the overlap between the Companies' ESP and the Distribution Case warrants FES's participation in both proceedings in order to insure that the issues associated with, and bases for, the Companies' proposed ESP pricing, including distribution rates, are fully developed and explored for the Commission's consideration. The Companies' request for a waiver of certain filing requirements recognizes this overlap between the Distribution Case and the ESP (and the Companies' Supplemental Long-Term Forecast Report matter):

[The Companies' Supplemental Long-Term Forecast Report] will be fully litigated as an adjunct to the Companies' anticipated Electric Security Plan (ESP) filing and in parallel to this distribution rate case. That Supplemental LTFR filing supports a nonbypassable surcharge proposal for generation capacity that will be made in the Companies' ESP case pursuant to Section

4928.143(B)(2), Revised Code. . . . More specifically, at the time this distribution rate case is being adjudicated, [the Companies] will have separate generation/ESP cases pending that will independently determine the Companies' generation and distribution rates on an unbundled basis.<sup>3</sup>

FES has substantial experience and can contribute to the development of the issues for the Commission's consideration, as a generation service provider and a promoter of fair and open competition in numerous Commission proceedings.<sup>4</sup> FES's ability to protect its interests would be impaired or impeded if it was not allowed to participate in this Distribution Case because of the potential impact on the Companies' ESP Application and competition in the Companies' service territories. No other party in this proceeding can adequately represent FES's interests.

FES's request to intervene also is timely because the Companies' Notice was only recently filed and no deadlines for intervention, discovery or hearing have yet been set. Therefore, FES's intervention will not unduly prolong or delay this proceeding, which has not yet begun.

WHEREFORE, FES respectfully requests that the Commission grant this Motion to Intervene and that it be made a party of record to this proceeding.

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<sup>3</sup> See Mot. to Establish Test Period Dates and for Waiver of Certain Filing Requirements, filed Jan. 27, 2011 at p. 9.

<sup>4</sup> See, e.g., *In re Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 10-2586-EL-SSO, Mot. to Intervene of FES, filed Nov. 19, 2010; *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 09-906-EL-SSO, Mot. to Intervene of FES, dated Nov. 25, 2009.

Respectfully submitted,



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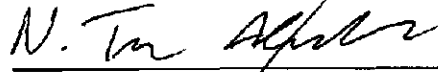
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene of FirstEnergy Solutions Corp. and Memorandum in Support* thereof was served this 17<sup>th</sup> day of February, 2011, via e-mail and first-class U.S. mail, postage-prepaid, upon the parties below.



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