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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.	)	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.	)	Case No. 08-918-EL-SSO

MOTION TO INTERVENE
OF FIRSTENERGY SOLUTIONS CORP.

Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, FirstEnergy Solutions Corp. ("FES") moves to intervene in the proceeding on remand that is the subject of the Commission's May 25, 2011 Entry. FES has a number of real and substantial interests in this proceeding on remand which may be prejudiced by the results of the proceeding. This proceeding involves consideration of two significant provisions of the current electric security plan ("ESP") of Columbus Southern Power Company and Ohio Power Company (collectively, the "Companies"). These provisions are also at issue in the Companies' pending ESP Application proceeding, to which FES has been granted leave to intervene, and regarding which FES is uniquely situated to assist the Commission in developing the complete record. In light of the Commission's May 25, 2011 Entry re-opening this proceeding for the submission of new testimony and an evidentiary hearing, FES's Motion is timely.

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Thus, as set forth more fully in the attached memorandum in support, FES respectfully requests that the Commission grant this motion to intervene.

Respectfully submitted,

Mark A. Hayden per authorization

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

On January 27, 2011, Columbus Southern Power Company and Ohio Power Company (collectively, the "Companies") filed an Application for approval of a new standard-service offer ("SSO") pursuant to R.C. § 4928.143 in Case Nos. 11-346-EL-SSO *et al.* (the "Pending ESP").[1] FirstEnergy Solutions Corp. ("FES") is a relatively new competitive retail electric service ("CRES") provider in the Companies' territories and, as such, intervened earlier this year in the Companies' Pending ESP proceeding. As a result of the Supreme Court of Ohio's recent decision and the Commission's Order on Remand involving the Companies' existing SSO (the "Current ESP"), the Commission will resolve factual and legal issues in this docket which could significantly impair FES's ability to represent its interests in the Pending ESP. Moreover, Commission action herein could significantly impact FES's ability to serve retail customers in the Companies' service territories under both the Current ESP and the Pending ESP. Because the Commission has only recently established the procedure for resolution of these issues

[1] *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.

through an evidentiary hearing to be conducted in July (the "Remand Proceeding"), FES's Motion to Intervene is timely and will not prejudice the existing parties.[2] Accordingly, FES requests that it be allowed to intervene so that it may participate in the Remand Proceeding and insure that its interests are protected and adequately represented.

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.

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[2]*See* O.A.C. 4901:1-11(E) (providing that a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding"). As discussed herein, FES's Motion has been filed more than a month before the hearing and the Commission has not otherwise set any specific deadline for this particular proceeding.

- **FES has a real and substantial interest in the Remand Proceeding because of the potential effects of the outcome of this Proceeding on the Companies' Pending ESP, in addition to the effects on competition generally.**

FES is an owner and operator of electric generating facilities and a certified CRES provider in Ohio. Although it had no customers in the Companies' service territories at the time the Companies applied for the Current ESP, FES has since begun to serve as a CRES provider to customers in those service territories. As a CRES provider and wholesale provider, FES is impacted by the structure and function of the Companies' SSO. For example, FES and other CRES providers are affected when generation-related costs are passed on to all customers, including shopping customers, through an unjustified POLR charge. FES, as both an active wholesale and retail supplier, is also significantly affected by the Companies' methods for obtaining generation service for SSO customers. Not only do the terms of the Current ESP impact FES's present status as a provider in the Companies' service territories, but if the Pending ESP is not approved or is withdrawn, the Current ESP also will continue to serve as the Companies' SSO going forward after December 31, 2011. *See* R.C. § 4928.143(C)(2)(b). Therefore, FES has a significant interest in the outcome of this Remand Proceeding.

In addition, FES has significant real and substantial interests in the Remand Proceeding because of the overlap between it and the Companies' Pending ESP. FES's real and substantial interest in protecting effective competition under the Companies' SSO – and its recent presence in the Companies' service territories – led FES to intervene in the Companies' Pending ESP proceeding, which Motion the Companies have not opposed.[3] In the Pending ESP, the Companies seek to continue the POLR Charge Rider, based on the same formula used to create

[3] *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. 11-346-EL-SSO, 11-348-EL-SSO, Motion to Intervene of FirstEnergy Solutions Corp., filed Feb. 14, 2011.

the POLR Charge Rider in the Current ESP. In the Pending ESP, the Companies also seek to continue their recovery of environmental carrying costs. The Companies' ability to continue these provisions will have a significant impact on the Companies' SSO. Through the Remand Proceeding, the Commission has also established[4] that it will hear evidence and take new testimony on the propriety of the Companies' formula for calculating the purported costs associated with its POLR responsibility and the legal bases under R.C. § 4928.143, if any, for such a charge and the recovery of environmental carrying costs. The Commission's resulting decision will, therefore, not only impact the Companies' Current ESP, but also impact the Companies' Pending ESP.[5] The Commission's decision could effectively close the door on certain arguments regarding these provisions in the Pending ESP proceeding. This overlap warrants FES's participation in the Remand Proceeding in order to insure that the issues associated with, and bases for, the Companies' Pending ESP pricing are fully developed and explored for the Commission's consideration.

Moreover, the pricing of the Companies' Current ESP is directly related to the statutory test for the Companies' Pending ESP. In the Pending ESP, the Companies are comparing the SSO price proposed in the Pending ESP to a projected market-rate offer ("MRO") price. *See* R.C. § 4928.143(C)(1). This comparison requires that the Companies' "most recent standard service offer price" be used to calculate a blended MRO price. *See* R.C. § 4928.142(D). The Companies' ability to recover a POLR Charge and environmental carrying costs – which will be decided in the Remand Proceeding – will significantly impact their "most recent [SSO] price" and the resulting analysis in the Pending ESP. FES, as a wholesale and retail provider and an

[4] *See* Entry, May 25, 2011.

[5] Indeed, the Commission's decisions on the record presented during this Remand Proceeding may guide subsequent interpretations of the allowable provisions in other SSO proceedings, beyond the Companies' rate proceeding. FES serves as an active supplier in all Ohio utilities' service territories and, therefore, its interest in the results of this Remand Proceeding are certainly real and substantial.

intervenor in the Pending ESP, has a real and substantial interest in developing the issues related to the Companies' SSO price and the proper components thereof.

FES's ability to protect all of these real and substantial interests would be significantly impaired if FES was not allowed to intervene in the Remand Proceeding. FES's Motion to Intervene should be granted.

- **FES is uniquely positioned to assist in a resolution of the Remand Proceeding because it has spent considerable time and resources developing the legal issues associated with the Pending ESP.**

FES has substantial general and specific experience and expertise with the issues raised in the Remand Proceeding, and can significantly contribute to the development of these issues for the Commission's consideration. As a generation service provider and a promoter of fair and open competition in numerous Commission proceedings, FES has broad experience in fully developing issues relating generally to wholesale and retail supply and the impact of SSO rates on competitive markets.[6] But, more specifically, FES has invested significant time and resources over the past several months as an intervenor in the Companies' Pending ESP proceeding to analyze the legal and factual issues surrounding the Companies' POLR Charge Rider and attempts to recover environmental costs. For example, FES has closely analyzed the purported bases for the Companies' POLR Charge Rider and the Companies' use of the Black-Scholes model to calculate the POLR Charge Rider. Therefore, FES is well-positioned to contribute to the record for the Commission's consideration of the issues in the Remand Proceeding.

[6] *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.

- **FES's request to intervene is timely because the Commission has only recently established the procedural schedule for the Remand Proceeding.**

Although the Current ESP matter was initiated some time ago, the Remand Proceeding is, in effect, a new and distinct proceeding defined by the Supreme Court's April 19, 2011 decision,[7] the Commission's subsequent May 4, 2011 Entry on remand,[8] and the Commission's May 25, 2011 Entry establishing a procedural schedule for a hearing on the issues. The parties have only begun to address the issues raised by the Remand Proceeding pursuant to a new schedule that provides the parties with approximately one month to prepare testimony and conduct discovery and that sets a hearing for July 12, 2011.[9] Because this Motion is filed more than five days before the evidentiary hearing, it is timely.[10] Therefore, FES's participation in this new procedure will not unduly prejudice the existing parties or delay the Remand Proceeding. FES's Motion, which has been filed just one day after the Commission's procedural Entry, is timely.

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

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[7] *In re Application of Columbus Southern Power Co.*, No. 2009-2022, 2011-Ohio-1788 (Apr. 19, 2011).

[8] Entry, filed May 4, 2011.

[9] Entry, filed May 25, 2011.

[10] O.A.C. 4901:1-11(E). *See, generally,* March 23, 2011 Entry on Rehearing granting motions to intervene after proceedings were re-opened in *In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company,* Case Nos. 09-580-EL-POR *et al.*

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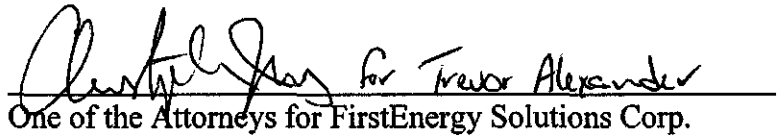
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene of FirstEnergy Solutions Corp.* and *Memorandum in Support* thereof was served this 26th day of May, 2011, via e-mail upon the parties below.



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