

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Columbus Southern Power Company and ) Case Nos. 11-346-EL-SSO  
Ohio Power Company for Authority to ) 11-348-EL-SSO  
Establish a Standard Service Offer Pursuant )  
to Section 4928.143, Revised Code, in the )  
Form of an Electric Security Plan. )

In the Matter of the Application of )  
Columbus Southern Power Company and ) Case Nos. 11-349-EL-AAM  
Ohio Power Company for Approval of ) 11-350-EL-AAM  
Certain Accounting Authority. )

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**MEMORANDUM CONTRA MOTION OF COLUMBUS SOUTHERN  
POWER COMPANY AND OHIO POWER COMPANY FOR LEAVE TO FILE  
ADDITIONAL TESTIMONY AND ADJUST THE PROCEDURAL SCHEDULE**

Respondents<sup>1</sup> hereby submit this response to the July 1, 2011 motion<sup>2</sup> filed by Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio"), asserting that no adjustments to the existing procedural schedule in the instant proceeding are necessary, notwithstanding the filing of new testimony by AEP Ohio on that date. Rather, to provide adequate time for all parties to review, analyze, and respond to AEP Ohio's new testimony, Respondents respectfully request that the Attorney Examiner grant a two (2) week extension for Intervenor testimony and the conclusion of discovery and a one (1) week extension for Staff testimony. Because the parties will need to conduct additional discovery in order to respond to this new testimony filed by AEP Ohio, Respondents also respectfully request a shortening of the current response time from twenty (20) to five (5) days for all discovery relating to this new

<sup>1</sup> Respondents include the following Intervenor: Exelon Generation Company, LLC, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., and FirstEnergy Solutions Corp.

<sup>2</sup> Motion of Columbus Southern Power Company and Ohio Power Company for Leave to File Additional Testimony and Adjust the Procedural Schedule and Request for Expedited Ruling (the "Motion").

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testimony.<sup>3</sup> Further, to address procedural and administrative matters prior to the hearing, Respondents respectfully request a prehearing conference the week of August 8, 2011.

### **ARGUMENT**

On July 1, 2011, AEP Ohio filed several new pieces of testimony relating to the Turning Point Solar Project, the costs of which AEP Ohio seeks to collect through its proposed non-bypassable Generation Resource Rider (“GRR”). Along with this testimony, AEP Ohio submitted the Motion whereby it claims that no adjustments to the current procedural schedule are necessary and that to the extent this Commission determines to allow extra time for Intervenor testimony or discovery, such extensions be limited to issues addressed in this new testimony.<sup>4</sup> In support of the Motion, AEP Ohio contends that this new testimony was provided “well in advance of the current testimony and discovery deadlines.”<sup>5</sup>

Respondents respectfully disagree with AEP Ohio’s assertion that no adjustments to the existing procedural schedule are necessary. To the contrary, without an extension to the existing procedural schedule, Respondents would be unduly prejudiced by the limited time with which they would be afforded to respond to this new testimony. Under the existing procedural schedule, Intervenor testimony is due on July 15, 2011. Discovery, with the exception of notices of depositions, is set to conclude on July 22, 2011. AEP Ohio filed and served, late in the day on the Friday before the Fourth of July holiday weekend, five new pieces of testimony. Part of this testimony was too voluminous to serve electronically and was therefore sent out by U.S. Mail, which was not received by Respondents until July 6, 2011. As such, Respondents were not even able to begin a meaningful review of this testimony until July 5, and with respect to the

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<sup>3</sup> Respondents support AEP Ohio’s request for an expedited ruling on the Motion and they neither support nor oppose AEP Ohio’s request for leave to file additional testimony.

<sup>4</sup> Memorandum in Support of the Motion (“Mem. in Supp.”) at 2-3.

<sup>5</sup> *Id.* at 2.

testimony that was served by U.S. Mail, until July 6. If the existing procedural schedule were maintained, the Intervenor would have less than ten days to review and analyze the new information filed by AEP Ohio and even less time to conduct any discovery necessary so as to respond by the July 15, 2011 deadline for testimony submission. Respondents require additional time in order to review, analyze, conduct discovery as appropriate on, and respond to, this new testimony. Therefore, Respondents hereby request that the dates in the existing procedural schedule be amended to conform to the following schedule:

- Intervenor testimony due on July 29, 2011;
- Conclusion of discovery, except for notices of depositions, on August 5, 2011;
- Staff testimony due on August 5, 2011;
- Prehearing conference the week of August 8, 2011; and
- Commencement of the hearing on August 15, 2011.

Respondents submit that it makes no sense to create a separate deadline for testimony responding solely to AEP Ohio's new testimony, as AEP Ohio would suggest.<sup>6</sup> Doing so would unnecessarily complicate the record and needlessly bifurcate Intervenor testimony on similar issues into two parts. AEP Ohio's new testimony relates to the Turning Point Solar Project and is intended to supplement existing testimony that purports to support AEP Ohio's proposed GRR. As such, this new testimony contains information that may change the analyses of the total costs that AEP Ohio purports to collect through this rider and through its overall proposed ESP rate—which will likely be addressed in Intervenor testimony. Rather than filing a supplemental and separate round of testimony that would address the costs to be recovered in the GRR, it is in the interests of judicial economy and sound decision-making for Intervenor and

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<sup>6</sup> Mem. in Supp. at 2-3.

Staff to file one single round of testimony addressing this issue.

As an alternative to the schedule proposed above – which keeps the same hearing date and only gives Staff an extra week for testimony – Respondents would be supportive of a two (2) week extension of all the dates in the existing procedural schedule. There is no legal basis upon which to rush to hearing in this matter. AEP Ohio's Application filed on January 27, 2011 did not comply with the Administrative Code's SSO rules requiring the filing with the Application of a complete set of testimony that "shall fully support all schedules and significant issues identified by the electric utility."<sup>7</sup> An ESP Application must include "testimony explaining and supporting each aspect of the ESP."<sup>8</sup> In particular, when an applicant is requesting cost recovery for a generating facility under R.C. § 4928.143(B)(2)(c), the Application must include "a description of the projected costs of the proposed facility."<sup>9</sup> Because AEP Ohio is seeking non-bypassable cost-recovery under R.C. § 4928.143(B)(2)(c) of the costs of the Turning Point Solar Project, its Application is required to include, testimony detailing the projected costs of this project. AEP Ohio did not provide this information until July 1, 2011, while AEP Ohio had a waiver for late submission of such information<sup>10</sup>, the waiver did not authorize a reduction in the quality of the review. If AEP Ohio was given more time to complete its application filing it stands to reason that the intervenors should receive more time to analyse and respond. Thus, a continuance of the evidentiary hearing until August 29, 2011 would be a reasonable alternative.<sup>11</sup>

Along with the extension of the dates in the procedural schedule, Respondents also

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<sup>7</sup> O.A.C. § 4901:1-35-03(A).

<sup>8</sup> O.A.C. § 4901:1-35-03(C)(1).

<sup>9</sup> O.A.C. § 4901:1-35-03(C)(9)(b)(i).

<sup>10</sup> AEP Ohio's Application remains incomplete to the extent it fails to provide testimony supporting other aspects of the ESP and fails to provide the Commission with information necessary to compare the proposed ESP in the aggregate to the expected results of an MRO, as detailed in FirstEnergy Solutions Corp.'s June 6, 2011 Motion to Dismiss.

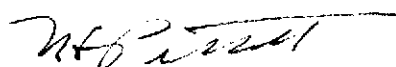
<sup>11</sup> See R.C. § 4928.143(C)(1).

request a shortening of the response time for all discovery. The twenty (20) day response period permitted by the Administrative Code<sup>12</sup> hardly provides sufficient time in which Intervenor may obtain discovery prior to the submission of testimony. Even if the Attorney Examiner grants an extension to July 29, 2011 for the submission of Intervenor testimony, Respondents may not receive responses from AEP Ohio with enough time to incorporate them into their respective testimony. As the additional testimony raises a variety of new issues relating to AEP Ohio's proposed GRR, it is essential that Respondents be able to review discovery responses prior to filing their own testimony. Accordingly, Respondents request that AEP Ohio be given five (5) days to respond to any discovery regarding the additional testimony.

### **CONCLUSION**

Wherefore, in consideration of the foregoing, Respondents respectfully request that AEP Ohio's Motion be denied to the extent that it requests no changes to the procedural schedule. Instead, Respondents respectfully request that the deadlines in the existing procedural schedule be amended as stated herein.

Respectfully submitted,



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<sup>12</sup> O.A.C. §§ 4901-1-19(A), -20(C), -22(B).

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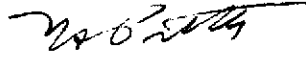
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 7th day of July, 2011 by electronic mail, upon the persons listed below.



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