

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast     )  
Report of Ohio Power Company and     ) Case No. 10-501-EL-FOR  
Related Matters.     )

In the Matter of the Long-Term Forecast     )  
Report of Columbus Southern Power     ) Case No. 10-502-EL-FOR  
Company and Related Matters.     )

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**FIRSTENERGY SOLUTIONS CORP.'S MEMORANDUM CONTRA  
TO MOTION OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER  
COMPANY FOR ESTABLISHMENT OF A PROCEDURAL SCHEDULE  
AND COMPANION STATUS**

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FirstEnergy Solutions Corp. ("FES") opposes the motion filed on July 22, 2011, by Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio"), which seeks two things: (1) establishment of an unreasonable schedule for submitting all testimony, conducting discovery related to that testimony, and proceeding to hearing, all in less than one month from now; and (2) asking the Commission to consider this docket and the 11-346-EL-SSO and 11-348-EL-SSO dockets (the "ESP II Proceeding") as "companion dockets" because AEP Ohio is hoping the Commission will make a finding in this docket that it can use in the ESP II Proceeding. The motion should be denied for the reasons stated below, and a reasonable schedule in the form proposed below by FES should be adopted.

**I. This Commission's Determinations to be Made in this LTFR Docket Have No Relevance to the ESP II Proceeding and Cannot be Transferred to the ESP II Proceeding.**

Treating this docket as a "companion docket" to the ESP II Proceeding is neither authorized nor permitted by Ohio law. This docket is a Long-Term Forecast Report ("LTFR") proceeding governed by R.C. § 4935.04. As set forth in Division (C) of that statute, an LTFR

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must include, *inter alia*, a 10-year forecast of annual energy demand, peak load, and reserves; a general description of the resource plan to meet demand; a range of projected loads during the period; a description of major utility facilities<sup>1</sup> planned to be added or taken out of service; and a description of the major utility facilities that, in the judgment of such person, will be required to supply system demands during the forecast period. The Commission is directed to review the LTFR application, which may include a public hearing “limited to issues relating to forecasting,” and to make seven determinations:

- (1) All information relating to current activities, facilities agreements, and published energy policies of the state has been completely and accurately represented;
- (2) The load requirements are based on substantially accurate historical information and adequate methodology;
- (3) The forecasting methods consider the relationships between price and energy consumption;
- (4) The report identifies and projects reductions in energy demands due to energy conservation measures in the industrial, commercial, residential, transportation, and energy production sectors in the service area;

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<sup>1</sup> “Major utility facility” is defined in R.C. § 4935.04(A) to mean:

(a) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(b) A gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of one hundred twenty-five pounds per square inch.

“Major utility facility” does not include electric, gas, or natural gas distributing lines and gas or natural gas gathering lines and associated facilities as defined by the public utilities commission; facilities owned or operated by industrial firms, persons, or institutions that produce or transmit gas or natural gas, or electricity primarily for their own use or as a byproduct of their operations; gas or natural gas transmission lines and associated facilities over which an agency of the United States has certificate jurisdiction; facilities owned or operated by a person furnishing gas or natural gas directly to fifteen thousand or fewer customers within this state.

Prior to the adoption of S.B. 3, effective January 1, 2001, “major utility facility” included an electric generating plant designed for operation at a capacity of 50 MW or more. Since January 1, 2001, reporting requirements related to major utility facilities has not included major generating facilities.

(5) Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts, and make recommendations where possible for necessary and reasonable alternatives to meet forecasted electric power demand;

(6) The report considers plans for expansion of the regional power grid and the planned facilities of other utilities in the state;

(7) All assumptions made in the forecast are reasonable and adequately documented.

R.C. § 4935.04(D)-(F). Pursuant to R.C. § 4935.04(H), the Commission's determinations may be used in specified statutory proceedings conducted pursuant to R.C. §§ 4905.40, 4905.401, 4905.41, 4905.42, 4905.70, 4906.10 and 4909.18. No reference is made to R.C. § 4928.143 and, thus, no authority is conferred to make use of the Commission's LTFR determinations in an ESP proceeding.

Contrary to what AEP Ohio is attempting to accomplish in this LTFR proceeding, the LTFR filing requirements do not involve in any manner a showing that there is a need for solar resources to satisfy the renewable benchmarks in R.C. § 4928.64. Likewise, the Commission is not authorized by R.C. § 4935.04(F) to make a determination that AEP Ohio needs to develop solar resources on its own to satisfy the renewable benchmarks in R.C. § 4928.64. The only showing relating to generation resources involves forecasts of **total** energy demand, peak resources and reserves and a description of how demand will be met. The Commission's review is limited to determining that the forecasts are reasonable and adequately documented, not that a planned resource is needed.<sup>2</sup> AEP Ohio's summary of its ten-year forecast can be found on Summary Exhibit 4 of its Integrated Resource Plan, and it shows that the AEP-East capacity position exceeds margin requirements for all years studied. This forecast, and the associated

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<sup>2</sup> The determination of need is reserved to the Power Siting Board with regard to major utility facilities; however, electric generating facilities are not subject to review for "need." See R.C. § 4906.10(A).

documentation supporting the forecast, are what the Commission may review for reasonableness in this docket. A determination that AEP Ohio needs to construct solar resources is beyond the statutory scope of this docket<sup>3</sup> and, thus, the entirety of AEP Ohio's supplement filed on December 20, 2010, has no relevance to the determinations the Commission must make under R.C. § 4935.04(F).

The corollary also is true, in that the finding of "need" that must be made for purposes of R.C. § 4928.143(B)(2)(c) cannot be made in this docket. Section 4928.143(B)(2)(c) specifies that "no surcharge shall be authorized unless the commission first determines *in the proceeding* that there is need for the facility based on resource planning projections submitted by the electric distribution utility." Not only does R.C. § 4935.04(H) not allow LTFR determinations to be relied upon in Chapter 4928 proceedings, but Section 4928.143(B)(2)(c) *requires* that the finding of need for a new generating facility must be made *in the ESP proceeding*. AEP Ohio's attempt to obtain that finding in this proceeding is prohibited by Ohio law.<sup>4</sup>

Therefore, AEP Ohio's attempt to convert this LTFR docket into a sub-docket of its ESP II proceeding must be rejected for two reasons: (1) any finding of need for solar energy resources cannot be made in this docket; and (1) any finding of need for purposes of R.C. §

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<sup>3</sup> Although an LTFR must include a discussion of what major utility facilities will be added and a description of the major utility facilities the applicant believes are required, generating resources are not major utility facilities. Even prior to S.B. 3, the Turning Point solar project that AEP Ohio attempts to include in this docket would not have qualified as a major utility facility because planned capacity is below the 50 MW minimum.

<sup>4</sup> AEP Ohio's confusion may arise from O.A.C. 4901:1-35-03(C)(9)(b)(i), which directs that the need for a proposed facility to be included in an ESP under R.C. § 4928.143(B)(2)(c) "must have already been reviewed and determined by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code." As explained above, this provision conflicts with statutory authority and, thus, is invalid.

4928.143(B)(2)(c)<sup>5</sup> must be made in an ESP docket. There is no statutory basis for treating this docket as a “companion docket” to the ESP II Proceeding.

## **II. AEP Ohio’s Proposed Schedule Is Unreasonable.**

AEP Ohio proposes that all parties submit pre-filed testimony on August 19, 2011, that a prehearing conference be conducted on August 22, 2011, and that the hearing reconvene on August 29, 2011.<sup>6</sup> This schedule is unreasonable for several reasons.

First, at the conclusion of the first day of the public hearing, the Attorney Examiner granted a continuance of the evidentiary hearing upon counsel for Staff’s representation that he “would notify the Bench when you are prepared to go to hearing on this.”<sup>7</sup> No notification has been provided to date and, thus, the hearing should remain on hold until such time as Staff’s investigation is complete.

Second, joint filing of testimony by AEP Ohio and intervenors lacks any logic given that intervenors will necessarily be responding to whatever elements of the LTFR filing AEP Ohio puts at issue in its pre-filed testimony. Moreover, intervenors likely will require discovery from AEP Ohio after its pre-filed testimony is submitted and before filing their own testimony. Thus, the filing of pre-filed testimony should be staggered by at least forty-five days (and this short period is only reasonable if discovery responses are provided with a ten-day turn-around).

Third, to the extent that AEP Ohio actually intends to coordinate this docket with the ESP II Proceeding, its proposed schedule directly conflicts with the hearing schedule in that proceeding. The ESP II Proceeding is scheduled to start on August 15, 2011, and involves

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<sup>5</sup> Notably, what is “needed” and can obtain nonbypassable cost recovery under R.C. § 4928.143(B)(2)(c) is not solar energy resources. The cost of solar energy resources can only be recovered on a bypassable basis as mandated by R.C. § 4928.64(E).

<sup>6</sup> The first day of the public hearing was held on March 9, 2011, and then continued so that Staff could complete their investigation of the supplement filed by AEP Ohio on December 20, 2010. *See* Motion for Hearing filed by Staff on January 12, 2011.

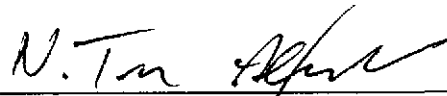
<sup>7</sup> Mar. 9, 2011 Hearing Transcript p. 21:4-8 (Mr. McNamee responded, “Oh, certainly.”).

thirteen AEP Ohio witnesses, twenty-four intervenor witnesses, and sixteen Staff witnesses. It is likely that the entirety of AEP Ohio's proposed schedule will be preempted by the hearing in the ESP II Proceeding. Thus, even if one were to accept the basis for AEP Ohio's motion, the proposed schedule is unreasonable.

FES agrees that a schedule should be established for this docket and proposes that future testimony and hearing dates be keyed to Staff's notification to the Attorney Examiner and parties that it has completed its investigation. Assuming that notification is provided during the month of August, AEP Ohio should file its testimony on September 30, 2011. Intervenors should then be given leave to conduct discovery<sup>8</sup> and pre-file testimony on November 14, 2011, with a hearing date to be set on or after December 5, 2011. If Staff's notification is not provided in August, then these dates should be adjusted to correspond to the date when notification is provided.

WHEREFORE, FES respectfully requests that the Commission deny AEP Ohio's motion and adopt the schedule proposed above by FES.

Respectfully submitted,



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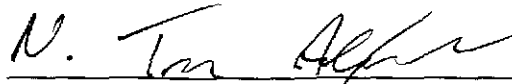
<sup>8</sup> Given that AEP Ohio seems intent on including issues in this docket that are not authorized by R.C. § 4935.04, this time period also could be used by intervenors to file motions to strike and thereby limit the issues to those permitted by law.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra* was served this 8th day of August, 2011, via e-mail and first-class U.S. mail, postage-prepaid, upon the parties below.



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