

FILE

5

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2011 AUG 10 PM 2:49
PUCO

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

COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER
COMPANY'S MEMORANDUM CONTRA
FIRSTENERGY SOLUTIONS CORP.'S MOTION FOR LEAVE TO FILE
AMICUS CURIAE POST-HEARING BRIEF

Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (collectively, the "Companies" or "AEP Ohio") oppose FirstEnergy Solutions Corp.'s (FES) Motion for Leave to file an amicus curiae post-hearing brief. FES's repeated attempts to intervene in this limited remand proceeding were properly rejected by the Commission, and FES's participation adds no value to the record in this case. AEP Ohio is not aware of any legal basis, and FES has asserted none, that would authorize FES to file an "amicus" brief at this stage of the proceedings.

Moreover, contrary to FES's assertion that it is not seeking to introduce evidence, FES attached 41 pages of briefing -- which relies heavily on the transcript from the remand hearing in which FES did not participate -- and an exhibit of the type that certainly would have been introduced at a hearing by FES, had it been a party. The exhibit to FES's proposed post-hearing brief was not introduced in evidence at the remand hearing, and FES's attempt to back-door additional evidence as a *non-party* is

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
technician R Date Processed 8/16/2011

evidence of FES's complete disregard for the Commission's previous rulings. Coincidentally, one of the witnesses retained by FES for AEP Ohio's ESP II cases, Dr. Lesser, appeared in the remand proceeding on behalf of IEU after FES' intervention was denied. In short, FES is now acting as if it was a party to the remand, with the right to participate as a party, despite seeking intervention and being denied, twice.

FES has no unique perspective or expertise to contribute to this proceeding in the role of "friend of the court." As set out in the Companies' memorandum in opposition to FES's intervention, competitive suppliers were well-represented at the remand hearing. CRES suppliers are equally well-represented at the post-hearing stage, for example, through the briefs filed by Constellation NewEnergy, Inc., which is a proper party to this proceeding. FES also has not established that it has any unique expertise in matters relating to the Provider of Last Resort (POLR) charge at issue in this proceeding. As the Commission well knows, FES serves shopping customers at market. It does not share AEP Ohio's risk of shopping customers, or a statutory obligation to stand ready to serve shopping customers who return to SSO service.

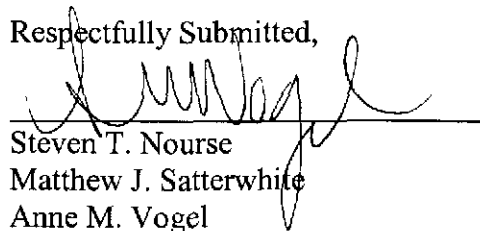
In the Commission's Entry of June 29, 2011, denying FES's interlocutory appeal of the Order denying intervention, the Commission pointedly *did not* solicit FES's continued participation through amicus filing, as it has in previous cases cited by FES. Rather, recognizing FES's real interests in creating a useful precedent for the Companies' 2011 ESP filing, the Commission noted that FES had been granted intervention in AEP Ohio's pending ESP, and had adequate opportunity to present its arguments with respect to POLR charges and otherwise fully participate in those proceedings.

Similar to its rejected motion to intervene, FES's motion for leave to file its post-hearing brief relies on its concern for precedent, and the effect of the Commission's decision on FES's ability to service AEP Ohio's customers. (FES Motion at 2.) It is painfully clear that FES has no interest in assisting the Commission in the role of a "friend of the court." Its proposed post-hearing brief reads as a persuasive memorandum focused on FES's competitive concerns with AEP Ohio's POLR charge. In other words, FES believes it has found a loophole around intervention, and is continuing to act as if the Commission had allowed FES to intervene, and as if it is a party to this proceeding.

CONCLUSION

Granting FES leave to participate in this post-hearing stage as *amicus curiae* would undermine the Commission's stated concern with creating precedent that would allow intervention virtually at any time. (See June 29, 2011 Entry at 14). The Commission has clearly stated that FES has no legal right to participate in this docket, and its motion for leave to file post-hearing briefs should be denied.

Respectfully Submitted,



Steven T. Nourse

Matthew J. Satterwhite

Anne M. Vogel

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1606

Telephone: (614) 716-1608

Fax: (614) 716-2950

Email: stnourse@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 South High Street
Columbus, Ohio 42315
Fax: (614) 227-2100
dconway@porterwright.com

Counsel for Columbus Southern Power Company
and Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra FirstEnergy Solutions Corp.'s Motion for Leave was served by electronic mail upon the individuals listed below this 10th day of August, 2011.


Anne M. Vogel

sbaron@jkenn.com
lkollen@jkenn.com
charlieking@snavely-king.com
mkurtz@bkllawfirm.com
dboehm@bkllawfirm.com
grady@occ.state.oh.us
etter@occ.state.oh.us
roberts@occ.state.oh.us
idzkowski@occ.state.oh.us
stnourse@aep.com
dconway@porterwright.com
jbentine@cwslaw.com
myurick@cwslaw.com
mwhite@cwslaw.com
khiggins@energystrat.com
barthroyer@aol.com
gary.a.jeffries@dom.com
nmoser@theOEC.org
trent@theOEC.org
henryeckhart@aol.com
nedford@fuse.net
rstanfield@nrdc.org
dsullivan@nrdc.org
tammy.turkenton@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com
drinebolt@aol.com
cmooney2@columbus.rr.com

ricks@ohanet.org
tobrien@bricker.com
david.fein@constellation.com
cynthia.a.fonner@constellation.com
mhpetricoff@vssp.com
smhoward@vssp.com
cgoodman@energymarketers.com
bsingh@integrysenergy.com
lbell33@aol.com
kschmidt@ohiomfg.com
sdebroff@sasllp.com
apetersen@sasllp.com
sromeo@sasllp.com
bedwards@aldenlaw.net
sbloomfield@bricker.com
todonnell@bricker.com
cvince@sonnenschein.com
preed@sonnenschein.com
ehand@sonnenschein.com
erii@sonnenschein.com
tommy.temple@ormet.com
agamarra@wrassoc.com
steven.huhman@morganstanley.com
dmancino@mwe.com
glawrence@mwe.com
gwung@mwe.com
stephen.chriss@wal-mart.com
lgearhardt@ofbf.org
cmiller@szd.com
gdunn@szd.com
aporter@szd.com