

FILE

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) Case No. 08-917-EL-SSO
its Corporate Separation Plan; and the Sale or) (Remand)
Transfer of Certain Generating Assets.)

In the Matter of the Application of Ohio)
Power Company for Approval of its Electric) Case No. 08-918-EL-SSO
Security Plan; and an Amendment to its) (Remand)
Corporate Separation Plan.)

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**REPLY IN SUPPORT OF MOTION OF FIRSTENERGY SOLUTIONS CORP. FOR
LEAVE TO FILE *AMICUS CURIAE* POST-HEARING BRIEF**

Columbus Southern Power Company and Ohio Power Company ("AEP Ohio") have opposed the request of FirstEnergy Solutions Corp. ("FES") to file an *amicus curiae* brief. AEP Ohio's argument fails to address the extensive authority cited by FES or to provide citation to any authority suggesting that FES should not be permitted to file an *amicus curiae* brief. As explained in detail below, FES has extensive experience and expertise which could benefit the Commission, does not seek to introduce any new evidence in this proceeding, and should be permitted to file an *amicus* brief.

FES's *amicus curiae* brief addresses only one issue in the AEP Ohio remand proceedings, the proposed POLR charge. Despite the limited nature of this brief, AEP Ohio has sought to prevent FES from filing a brief in this case because "FES has no unique perspective or expertise to contribute to this proceeding." AEP Ohio Memorandum Contra at 2. However, AEP Ohio has cited no authority in support of this supposed standard, and AEP Ohio's claim is factually incorrect. As pointed out in FES's motion, FES has extensive experience with POLR risk as a

supplier that has assumed POLR risk in competitive auctions and is very familiar with these issues. See FES Motion at 1. As FES has assumed POLR risk, FES is uniquely positioned to provide comments regarding AEP Ohio's claims.

AEP Ohio has also opposed FES's request because FES was denied intervention in this case. See AEP's Memorandum In Opposition at 3. AEP Ohio once again does not cite any authority in support of this position, and curiously claims "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." Id. at 1. Contrary to AEP Ohio's claims, FES's Motion cites extensive authority¹ making clear that where the Commission has declined to grant intervention to an entity, the Commission has permitted entities to share their views with the Commission through *amicus* filings. See FES Motion at 2. FES's Motion also cites authority² where the Commission has permitted *amicus* briefs even when intervention was not first sought. Id. As AEP Ohio has cited no authority in support of its position, and ignores the overwhelming authority cited by FES, this argument lacks merit.

Finally, AEP Ohio objects to a transcript attached to FES's brief and argues that FES is seeking improperly to introduce evidence in this action. This, of course, is not a basis for denying FES's motion, and AEP Ohio has not cited any authority suggesting that this one attachment has any impact on FES's request to file an *amicus* brief. Moreover, FES is not seeking to introduce the transcript into the record of this proceeding. FES simply attached the

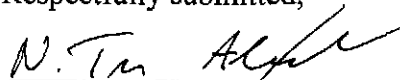
¹ See In the Matter of XO Ohio v. Upper Arlington, Case No. 03-870 (May 14, 2003 at 25)(denying motion to intervene but stating that proposed intervenor was welcome to file an *amicus* brief); FirstEnergy et al., Case No. 99-1212 (March 23, 2000 at 3)(entry denying AEP Ohio's attempt to intervene, but stating that AEP Ohio was welcome to file an *amicus* brief if circumstances warranted).

² See In the Matter of the Petition of Jane Marshall and Numerous Other Subscribers of the Gratis Exchange of Verizon North, Inc. v. Verizon North, Inc. and United Telephone Company of Ohio d.b.a. Sprint, Case No. 03-878, 2004 WL 1876408 (June 16, 2004 at 2)(granting OCC leave to file an *amicus* brief); In the Matter of The Petition Of Numerous Subscribers Of The Middletown Exchange Of Ameritech Ohio v. Ameritech, Case No. 98-357 (June 4, 2002 at 4)(granting OCC leave to file an *amicus* brief); In re Ohio Edison Company, Case No. 03-1966, 2004 WL 513726 (February 4, 2004 at 9) (accepting MISO's *amicus* brief).

transcript to its brief as a convenience to the parties and Commission. The earnings conference webcast itself is readily available on AEP Ohio's own website.³ FES's *amicus* brief also is not evidence in the proceeding, but FES hopes the Commission gives it appropriate consideration.

Given the significant impact that the Commission's decision will have on all of the CRES providers serving (or potentially serving) customers in AEP Ohio's territory, it is reasonable for the Commission to grant FES leave to file its proposed post-hearing *amicus* brief so the Commission will have as much reasoned discussion as possible as it decides these important issues. For the reasons specified above and in its Motion, FES respectfully suggests that the Commission should grant its Motion to file a post-hearing *amicus* brief.

Respectfully submitted,



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³ <http://www.aep.com/investors/webcasts/> (last accessed August 12, 2011)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion of FirstEnergy Solutions Corp. For Leave To File Amicus Curiae Post-Hearing Brief* was served this 15th day of August, 2011, via e-mail upon the parties below.



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