

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Power Company and Columbus Southern	)	Case No. 10-2376-EL-UNC
Power Company for Authority to Merge	)	
and Related Approvals.	)	

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	
Ohio Power Company for Authority to	)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer	)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,	)	
in the Form of an Electric Security Plan.	)	

In the Matter of the Application of	)	
Columbus Southern Power Company and	)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of	)	Case No. 11-350-EL-AAM
Certain Accounting Authority	)	

In the Matter of the Application	)	
of Columbus Southern Power	)	Case No. 10-343-EL-ATA
Company to Amend its Emergency	)	
Curtailment Service Riders	)	

In the Matter of the Application	)	
of Ohio Power Company	)	Case No. 10-344-EL-ATA
to Amend its Emergency Curtailment	)	
Service Riders	)	

In the Matter of the Commission Review of	)	
the Capacity Charges of Ohio Power	)	Case No. 10-2929-EL-UNC
Company and Columbus Southern Power	)	
Company.	)	

In the Matter of the Application of	)	
Columbus Southern Power Company	)	Case No. 11-4920-EL-RDR
for Approval of a Mechanism to Recover	)	
Deferred Fuel Costs Ordered Under	)	
Ohio Revised Code 4928.144	)	

In the Matter of the Application of	)	
Ohio Power Company for Approval	)	
of a Mechanism to Recover	)	Case No. 11-4921-EL-RDR
Deferred Fuel Costs Ordered Under	)	
Ohio Revised Code 4928.144	)	

**COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER  
COMPANY'S MEMORANDUM CONTRA  
INTERSTATE GAS SUPPLY, INC.'S  
APPLICATION FOR INTERLOCUTORY APPEAL**

Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (collectively, the "Companies" or "AEP Ohio") oppose the application of Interstate Gas Supply, Inc. (IGS) for interlocutory appeal of the Attorney Examiner's October 26, 2011 decision to deny IGS intervention in this nearly-final proceeding.

As the Commission is aware, on September 7, 2011, the Companies filed a Stipulation joined by numerous intervenors, the Companies, and Commission Staff, which resolves these varied pending proceedings. A hearing on the Stipulation commenced October 3 and ended on October 27. The Attorney Examiner therefore properly denied IGS's untimely motion to intervene, filed two weeks into the hearing on a Stipulation, which in turn was filed in a case that has been pending for nearly eleven months.

**The Attorney Examiner's Ruling is Supported by the  
Commission's Rules and Should be Affirmed**

Pursuant to Rule 4901-1-11(D), Ohio Admin. Code, 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 ..." Division (F) of that rule provides that "[a] motion to intervene which is not timely will be granted only under extraordinary circumstances."

IGS's motion to intervene was premised on the fact that because it recently became a certified retail electric supplier, it is now entitled to a seat at the table for purposes of participating in this proceeding and any subsequent meetings of stakeholders.

IGS does not claim that it has any unique concerns, such that its interests are not adequately represented by the numerous CRES providers who did timely intervene. In fact, CRES providers are adequately represented on both sides of the Stipulation, opposing and supporting. CRES providers will likewise be well-represented at the stakeholder processes contemplated by the filed Stipulation.

That IGS failed to realize in a timely fashion that its interests might be affected by AEP Ohio's ESP proceeding – filed in January – is not a reason to reopen the proceeding to intervention after the record has closed, and does not constitute an “extraordinary circumstance” warranting late intervention. IGS states that it should be allowed to intervene because late intervention was permitted for five other parties in this proceeding that filed motions to intervene out-of-time in April and May. But the circumstances must be considered as part of the context and timing of the late request. In this case, IGS' request was not only late (more than five months after the final late intervention request) but was actually made after-the-fact. Specifically, IGS moved to intervene after the record was closed, after the Stipulation was negotiated and filed, and after a full week of hearings. For these reasons, the Attorney Examiner properly denied IGS's motion to intervene out-of-time.

Moreover, to the extent IGS seeks intervention not because of its interests in this proceeding, but in the “stakeholder and collaborative process...unveiled in the Stipulation” it would cause chaos and be patently unfair to those parties who participated in good faith to negotiate a comprehensive Stipulation, to suddenly open the door to new parties.

### **IGS's Interlocutory Appeal is Without Merit and Should be Dismissed**

In addition to the reasons stated above in support of affirming the Attorney Examiner's ruling, Commission Rule 4901-1-15(E)(2) states that the Commission can dismiss an interlocutory appeal when the issues at stake are moot, and where there is no prejudice demonstrated. The complex issues raised in the Companies' ESP and related filings have been resolved through a comprehensive Stipulation, currently under consideration by the Commission. In the event the Commission accepts the Stipulation, the issues in these proceedings will be resolved and IGS' concerns would be moot. It is not reasonable for IGS to seek intervention in order to participate in subsequent meetings arising out of the Stipulation, when it admittedly had no interest in participating in the underlying negotiation of the Stipulation.

IGS has also failed to demonstrate any prejudice from being denied intervention. It does not claim to have any unique interests that will not continue to be adequately represented by the numerous existing intervenors that are also CRES providers.

### **Conclusion**

The Commission should dismiss IGS's application for interlocutory appeal because IGS has not established any prejudice as a result of the Attorney Examiner's denial of its motion to intervene. In the alternative, the Commission should affirm the order of the Attorney Examiner, because allowing IGS's motion for leave to intervene out of time, absent extraordinary circumstances or any justification whatsoever would be disruptive and distracting, and would set bad precedent.

Respectfully Submitted,

s/ Steven Nourse

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Interstate Gas Supply, Inc.'s Application for Interlocutory Appeal was served by electronic mail upon the individuals listed below this 2<sup>nd</sup> day of November, 2011.

s/ Steven Nourse

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Summary: Memorandum Contra Interstate Gas Supply, Inc.'s Application for Interlocutory electronically filed by Anne M Vogel on behalf of American Electric Power Company, Inc.