

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals))))	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Revs. Code, in the Form of an Electric Security Plan.))))))	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders))))	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders))))	Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.))))	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144)))))	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144)))))	Case No. 11-4921-EL-RDR

FIRSTENERGY SOLUTIONS CORP.'S OBJECTIONS TO AEP OHIO'S PROPOSED COMPLIANCE FILING AND REQUEST FOR EXPEDITED COMMISSION ACTION

FirstEnergy Solutions Corp. ("FES") hereby requests that the Commission take expedited action to remedy the impact of the proposed compliance filing submitted by Ohio Power Company and Columbus Southern Power Company (collectively, "AEP Ohio") on December 29, 2011.¹ The Commission's action is necessary because AEP Ohio's proposed compliance filing for its "Appendix C" does not carry out the terms of the Commission's December 14, 2011 Opinion and Order (the "Order") and because AEP Ohio has not provided sufficient and timely information regarding the current status of the RPM allotments and, as a result, suppliers and customers cannot fully understand the status of their charges as of January 1, 2012. Further, AEP Ohio seeks to establish the increased rates set forth in the Order as of January 1, 2012, but at the same time retain the right to withdraw the Partial Stipulation at some point, months in the future. *See* Dec. 22, 2011 and Dec. 29, 2011 Letters from S. Nourse to Commission. AEP Ohio cannot implement increased rates that it has not yet agreed to accept. The Commission should order AEP Ohio to continue its current rates until such time as AEP Ohio has accepted the Partial Stipulation as modified by the Commission's Order or until another ESP or MRO application is submitted and approved.

1. AEP Ohio's Compliance Filing for Its Appendix C Is Not Consistent With The Order.

The Commission's Order modified in several material respects AEP Ohio's Partial Stipulation and, more specifically, the proposed scheme for distributing allotments of RPM-

¹ These Objections are independent from any arguments FES may submit in support of an application for rehearing pursuant to O.A.C. 4901-1-35. FES expressly reserves its right to file an application for rehearing. However, due to the time sensitivities associated with AEP Ohio's intentions for service starting January 1, 2012, FES submits these Objections to bring the most pressing issues to the Commission's attention.

priced capacity. *See, generally*, Order. However, AEP Ohio's proposed Appendix C does not reflect those modifications and, as a result, does not comply with the Commission's Order. AEP Ohio's proposed revised "Appendix C", filed on December 29, 2011, includes language that does not comply with the Order:

- a) Section 4(a) includes a pro rata adjustment to the 21% allotment that decreases the allotments of RPM-priced capacity provided to residential and industrial customers. However, the Commission's Order at page 55 stated: "We are modifying the Stipulation such that RPM-priced capacity allocation determined for each customer class is only available for customers in the particular customer class, no RPM-priced capacity can be allocated to a customer in another class." Therefore, industrial and residential customers should receive their full 21% allotment regardless of what happens with the commercial class.
- b) Section 4(g) includes the load associated with governmental aggregation customers in the 21% allotment provided to residential customers. However, the Commission's Order at page 54 modified the Stipulation "to adjust the RPM set-aside levels" as necessary to accommodate governmental aggregation load. Thus, the 21% allotment must be increased as necessary to accommodate that load. Moreover, because "[t]he RPM set-aside level shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the Stipulated ESP, to the extent, and only, if necessary," the 29%/31% allotment in 2013 and 41% allotment in 2014 also must be increased as necessary to accommodate these programs. Therefore, the governmental aggregation load should be additive to any pro rata allotment provided to residential or commercial customers.
- c) Section 4(g) eliminates mercantile customers from the protections provided to governmental aggregation customers. However, the Commission's Order did not distinguish between classes of governmental aggregation customers, as is consistent with Ohio law. The Commission's Order clearly states at page 54: "[W]e find it necessary to modify the proposed Stipulation to adjust the RPM set-aside levels to accommodate the load of any community that approved a governmental aggregation program in the November 8, 2011, election to ensure that any customer located in a governmental aggregation community will qualify for the RPM set-Aside, so long as the community or its CRES provider completes the necessary process to take service in the AEP-Ohio service territory by December 31, 2012." The Commission's accommodation for governmental aggregation customers encompasses *all* such customers, including mercantile customers that participate in a governmental aggregation program. Therefore, all customers in eligible governmental aggregation communities, not just non-mercantile customers, are entitled to RPM-priced capacity.

- d) Section 4(g) provides that only those communities who approved governmental aggregation programs in the November 2011 election are entitled to an allotment of RPM-priced capacity. However, the Commission's Order at page 54 noted that it found "it necessary to modify the capacity set-asides during the term of this ESP . . . to accommodate governmental aggregation." The Commission did not provide any basis on which to distinguish the November 2011 ballot communities from those communities that have already established governmental aggregation, nor is there any rational basis on which to make such a distinction. Therefore, at a minimum, all communities that approved governmental aggregation on or before the November 2011 ballot should be entitled to receive an allotment of RPM-priced capacity.

For the Commission's reference, attached as Exhibit A is a redline of AEP Ohio's proposed Appendix C, which incorporates the changes discussed above and which was provided to AEP Ohio on December 27, 2011.

2. AEP Ohio Has Not Provided Sufficient Information Regarding The Queue.

AEP Ohio seeks to impose capacity charges that are approximately four times higher than current capacity charges while providing little to no information to CRES providers. Based on discussions with AEP Ohio representatives, AEP Ohio has taken the position that it cannot, at this time, provide FES with information regarding which of FES' customers have received an allotment or where those customers stand in the queue. But, at the same time, AEP Ohio intends to and is apparently capable of, charging those customers the increased rate as of Sunday (January 1, 2012). It will only further impede the competitive market in AEP Ohio's territory and cause increased confusion for customers who are (or are considering) shopping to keep CRES providers in the dark as to the status of their customers' related capacity charges. AEP Ohio's alleged inability to provide this information at this point is also inconsistent with its arguments at hearing that: (a) the queue had already formed starting in September 2011 and (b) that the competitive market would not be harmed because CRES providers could make contingent or mixed-rate offers. Regardless of the validity of this latter argument, it is moot when AEP Ohio cannot inform CRES providers as to customers' status in the queue. At a

minimum, the Commission should require AEP Ohio to grant a one-month extension on the implementation of the \$255/MW-Day capacity charge to allow for AEP Ohio to provide the necessary information to all CRES providers and to all affected customers.

3. AEP Ohio Cannot Institute The Increased Rates Authorized By The Order Because It Has Not Yet Accepted The Modifications.

In its cover letters submitting the compliance filings, AEP Ohio stated that it “does not waive its right . . . under R.C. 4928.143(C)(2), regarding withdrawal of its ESP Applications.” Dec. 22, 2011 Letter from S. Nourse; Dec. 29, 2011 Letter from S. Nourse. AEP Ohio also stated that a “determination regarding [the withdrawal of its ESP Applications] will be made after the Commission issues a final rehearing order (or the existing order becomes final in the event there are no rehearing requests).” *Id.* AEP Ohio’s proposal to increase rates, but wait and later decide whether to accept the Commission’s modifications that established those increased rates is inappropriate — particularly when the rehearing process could extend over a period of several months. AEP Ohio cannot institute rates it has not yet accepted and, instead, the Commission should order AEP Ohio to continue the current 2011 ESP rates until such time as AEP Ohio accepts the Commission’s modifications. Continuing the current 2011 ESP rates also would minimize disruption and confusion for customers because it is the current ESP that would continue if AEP Ohio rejects the Commission’s modifications. *See* R.C. § 4928.143(C)(2)(b). At a minimum, AEP Ohio’s rates should be subject to refund, until such time as AEP Ohio accepts the Commission’s modifications, or submits and receives approval of another SSO application.

4. Conclusion

As set forth herein, AEP Ohio's proposals do not comply with the Commission's Order and seek to institute increased rates that AEP Ohio has not yet accepted and of which AEP Ohio has not yet informed CRES providers. The Commission's immediate action is needed to provide clarity to AEP Ohio's customers and the competitive market regarding the rates in effect as of January 1, 2012.

Respectfully submitted,

s/ Laura C. McBride

Mark A. Hayden (0081077)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
haydenm@firstenergycorp.com

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com

Allison E. Haedt (0082243)
JONES DAY
P.O. Box 165017
Columbus, OH 43216-5017
(614) 469-3939
(614) 461-4198 (fax)
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Objections to AEP Ohio's Compliance Filing and Request for Expedited Commission Action* was served this 30th day of December, 2011, via e-mail upon the parties below.

s/ Laura C. McBride
One of the Attorneys for FirstEnergy Solutions Corp.

Steven T. Nourse
Matthew J. Satterwhite
Anne M. Vogel
American Electric Power Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
amvogel@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington Street, Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Dorothy K. Corbett
Amy Spiller
Duke Energy Retail Sales
139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
dorothy.corbett@duke-energy.com
amy.spiller@duke-energy.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Terry L. Etter
Maureen R. Grady
Jeffrey L. Small
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
etter@occ.state.oh.us
grady@occ.state.oh.us
small@occ.state.oh.us

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

Shannon Fisk
2 North Riverside Plaza, Suite 2250
Chicago, IL 60606
sfisk@nrdc.org

John W. Bentine
Mark S. Yurick
Zachary D. Kravitz
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
jbentine@cwsllaw.com
myurick@cwsllaw.com
zkravitz@cwsllaw.com

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
todonnell@bricker.com
cmontgomery@bricker.com

Jesse A. Rodriguez
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, Pennsylvania 19348
jesse.rodriguez@exeloncorp.com

Glen Thomas
1060 First Avenue, Ste. 400
King of Prussia, Pennsylvania 19406
gthomas@gtpowergroup.com

Henry W. Eckhart
2100 Chambers Road, Suite 106
Columbus, Ohio 43212
henryeckhart@aol.com

Jay E. Jadwin
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
jejadwin@aep.com

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

Laura Chappelle
4218 Jacob Meadows
Okemos, Michigan 48864
laurac@chappelleconsulting.net

Pamela A. Fox
Law Director
The City of Hilliard, Ohio
pfox@hilliardohio.gov

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Stephen J. Smith
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, Ohio 43215
cmiller@szd.com
ahaque@szd.com
ssmith@szd.com
gdunn@szd.com

Sandy Grace
Exelon Business Services Company
101 Constitution Avenue N.W., Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
kpkreider@kmklaw.com
dmeyer@kmklaw.com

Holly Rachel Smith
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, Virginia 20115
holly@raysmithlaw.com

Gregory J. Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Lija Kaleps-Clark; Benita Kahn
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
gary.a.jeffries@aol.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, Arkansas 72716
stephen.chriss@wal-mart.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

Werner L. Margard III
John H. Jones
William Wright
Thomas Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
William.wright@puc.state.oh.us
Thomas.Lindgren@puc.state.oh.us

Philip B. Sineneng
Terrance A. Mebane
Carolyn S. Flahive
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
philip.sineneng@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Samuel C. Randazzo
Joseph E. Olier
Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
jestes@skadden.com
paul.wight@skadden.com

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
tsantarelli@elpc.org

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Avenue, Suite 212
Columbus, Ohio 43212
callwein@williamsandmoser.com

Emma F. Hand
Douglas G. Bonner
Keith C. Nusbaum
Clinton A. Vince
SNR Denton US LLP
1301 K Street, NW, Suite 600, East Tower
Washington, DC 20005-3364
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
keith.nusbaum@snrdenton.com
Clinton.vince@snrdenton.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Trent A. Dougherty
Cathryn Loucas (0073533)
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
trent@theoeg.org
cathy@theoec.org

Joel Malina
Executive Director
COMPLETE Coalition
1317 F Street, NW
Suite 600
Washington, DC 20004
malina@wexlerwalker.com

David M. Stahl
Arin C. Aragona
Scott C. Solberg
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com

Jay L. Kooper
Katherine Guerry
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerry@hess.com

Robert Korandovich
KOREnergy
P. O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

Allen Freifeld
Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm Street, Suite 410
Conshohocken, PA 19428
afreifeld@viridityenergy.com
swolfe@viridityenergy.com

Mark A. Whitt
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
whitt@carpenterlipps.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/30/2011 4:47:22 PM

in

Case No(s). 10-2376-EL-UNC, 11-0346-EL-SSO, 10-2929-EL-UNC, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Objection to AEP Ohio's Compliance Filing and Request for Expedited Commission Action electronically filed by Ms. Laura C. McBride on behalf of FirstEnergy Solutions Corp.