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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application )  
of Columbus Southern Power )  
Company to Amend its Emergency )  
Curtailement Service Riders ) Case No. 10-343-EL-ATA  
In the Matter of the Application ) Case No. 10-344-EL-ATA  
of Ohio Power Company )  
to Amend its Emergency Curtailement )  
Service Riders )

COMMENTS OF  
CONSTELLATION NEWENERGY, INC.

I. INTRODUCTION

On March 19, 2010, AEP-Ohio filed an application to amend its emergency curtailment service riders. In its application, AEP-Ohio contends that its retail customers should be eligible to either: (i) participate in demand response through AEP-Ohio sponsored, Commission-approved programs; or (ii) integrate their customer-sited resources toward the electric utility's compliance through commitment of such resources to AEP-Ohio. In order to facilitate its compliance with the statutory peak demand reduction mandates of Amended Substitute Senate Bill 221, AEP-Ohio proposes two demand response program options by means of its application. The first customer option is described by AEP-Ohio as an "enhanced tariff program equivalent to PJM DRPs." The second customer option proposed by AEP-Ohio is described as "permitting conditional retail participation in PJM DRPs based on direct commitment of registered demand response load."

On March 30, 2010, Constellation NewEnergy, Inc. ("CNE") filed its motion for leave to intervene in these proceedings. CNE provides electricity and energy-related services to retail customers in Ohio as well as in 15 other states, the District of Columbia, and two Canadian provinces and serves over 15,000 megawatts of load and over 10,000 customers. CNE holds a certificate as a competitive retail electric supplier ("CRES") from the Commission to engage in the competitive sale of electric service to retail customers in Ohio. CNE currently provides service to retail electric customers in Ohio, including demand response products and services. As a certificated CRES provider in the

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state and a CFP across PJM, CNE has capability of providing conservation service as part of or independent of generation.

In these matters, Columbus Southern Power Company and Ohio Power Company (collectively “AEP”) filed an application (the “Application”) seeking approval of the AEP’s Emergency Curtailment Service Riders and a Second Demand Response Program involving conditional approval of retail participation in PJM demand response programs.

CNE has business interests in the State that will be affected by the outcome of the proceeding. As a provider of demand response products and services within the State, CNE has an interest in the instant proceeding as AEP attempts to limit customers’ access to demand response programs at the regional level, and their ability to choose a provider other than AEP for demand response products and services. Such a limitation will adversely affect customers’ ability to avail themselves of an economic opportunity that is of value to their business, and that contributes to the reliability of the electric grid.

## **II. COMMENTS**

Pursuant to the May 10, 2010 Entry of the Attorney Examiner, CNE is submitting these comments and objections to the Application.

- AEP’s Counting Of Customer Commitment of Load Registered Under PJM’s Demand Response Program Requires Further Detail
- Customers Who Participate In The PJM Demand Response Program Should Not be Vulnerable to Penalties Imposed By AEP
- Customers Who Take Service From A Competitive Retail Electric Supplier Should Not Be Subject to Energy Efficiency and Demand Response Riders

The Commission should evaluate AEP’s Application with an eye toward establishing a framework in which the greatest number of customers can choose from a full menu of energy efficiency and demand response options, offered from a variety of suppliers. CNE suggests that hearings may be beneficial in addressing these matters. However, should the Commission decide not to schedule a hearing, the Commission should address CNE’s concerns set forth below in granting any relief to AEP-Ohio.

**AEP's Counting Of Customer Commitment of Load Registered  
Under PJM's Demand Response Program Requires Further Detail**

It does not appear on its face that there is necessarily any direct negative effect from counting the amount of load that AEP customers have committed to the PJM Demand Response Program through a Curtailment Service Provider ("CSP") toward AEP's PDR benchmarks. However, more details need to be provided to ensure that customers are not prejudiced in any way. For example, it is important to note that under the PJM Demand Response Program, customers are interrupted only if there is a reliability event. AEP cannot and should not be allowed to place any additional obligations on these customers.

To the extent that AEP desires the ability to call for curtailments on its own, it should be required to do so under a program that is separate and distinct from the PJM Demand Response Program, and one which should be a voluntary commitment on the part of customers in return for clearly articulated benefit, such as compensation or other consideration by AEP. Any such plan must be presented to the Commission for approval, identifying the applicable criteria, payments, clearly defined obligations and penalties, etc. Without full disclosure and thorough review, such programs may be discriminatory, and have the added potential negative consequence of frustrating the ultimate objective in establishing the utility benchmarks in the first place. Any AEP-designed program must be carefully screened and evaluated for competitive issues, including the opportunity for meaningful stakeholder comment. The same holds true for any attempt by AEP to directly enroll customers in the PJM Demand Response Program. AEP is a utility - not a CSP - and should not be permitted to misuse its utility status to gain an unfair competitive advantage, receiving benefits from customers that it enrolls in the PJM Demand Response Program while passing its administrative costs on to customers through a rider or other rate recovery mechanism.

**Customers That Participate In The PJM Demand Response Program  
Should Not be Vulnerable to Penalties Imposed By AEP**

AEP should not be permitted to impose penalties on customers that make a commitment to the PJM Demand Response Program. The current Customer Demand Response Resource Commitment Agreement, as proposed by AEP, states:

“5. PENALTY- In the event a curtailment event is called by PJM and Customer does not curtail load by the curtailable amount set forth in Customer's AEP Ohio Contract, Customer shall be responsible for payment of any payment or forfeiture assessed against AEP Ohio due to AEP Ohio's failure to comply with its yearly statutory demand reduction target as a result of Customer's failure to curtail, but not to exceed the PJM payment identified in Customer's Curtailment Service Provider Contract. The penalty provision set forth herein applies even if Customer would not face a penalty under Customer's Curtailment Service Provider Contract for failing to curtail load when called upon by PJM to do so.”

The program referred to above is a PJM program, and should not be controlled in any way by a resource other than the CSP with whom the customer contracted. In the event of a curtailment, the PJM Demand Response Program calls on resources by CSP, not by individual customer. Therefore, an individual customer may or may not be called upon to curtail under the PJM Demand Response Program. That customer may or may not be an AEP customer. If the customer fails to perform as required by PJM, the customer is subject to penalties under the PJM Demand Response Program, and as contracted with their CSP. They should not be subject to any additional penalties from AEP, particularly given the fact that AEP is not providing these customers any service or benefits.

**Customers Who Take Service From A Competitive Retail Electric Supplier  
Should Not Be Subject to Energy Efficiency and Demand Response Riders**

CNE agrees with AEP's apparent understanding that customers who take supply service from a Competitive Retail Electric Supplier (“CRES”) should be allowed to participate in the PJM Demand Response Program without restriction. It should be made clear though that if a CRES mercantile customer who integrates its conservation efforts with AEP, the customer should be permitted to avoid AEP's energy efficiency and demand response riders. Such a result is in keeping with the fact that

AEP is not reserving any capacity for customers that are served by a CRES; rather, the CRES is required to reserve sufficient capacity for those customers.

### III. CONCLUSION

CNE respectfully requests that the Commission schedule a hearing in these matters. In the alternative, should the Commission decide not to schedule an evidentiary hearing, CNE respectfully requests that the Commission adopt the positions of CNE as set forth above in granting any relief to AEP-Ohio.

Respectfully Submitted,



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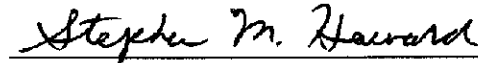
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Comments was served this 28<sup>th</sup> day of May, 2010 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



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