

FILE

**BEFORE
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
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**MOTION TO INTERVENE OF
FIRSTENERGY SOLUTIONS CORP.**

Pursuant to Ohio Revised Code § 4903.221 and Rule 4901-1-11, Ohio Administrative Code, FirstEnergy Solutions Corp. ("FES") moves to intervene in this proceeding. As Applicants Columbus Southern Power Company and Ohio Power Company indicate, this proceeding is a necessary precursor to their forthcoming Standard Service Offer ("SSO"). Accordingly, the Commission's decision of issues in this case will bear directly on the structure, conduct and outcome of the subsequent SSO. As a certified retail electric service provider, FES thus has a real and substantial interest in this proceeding that is not adequately represented by existing parties. For the reasons more fully set forth in the attached memorandum in support, FES respectfully requests that the Commission grant this timely request to intervene.

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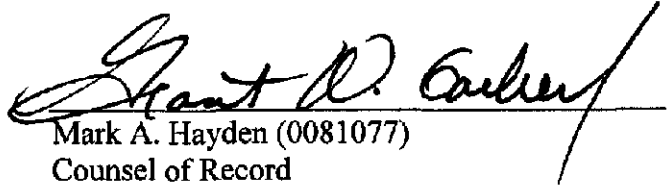
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Dated: November 8, 2010

Respectfully submitted,



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Columbus Southern Power Company)	Case No. 10-2376-EL-UNC
For Authority to Merge and Related)	
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On October 18, 2010, Ohio Power Company and Columbus Southern Power Company (collectively "Applicants" or "AEP-Ohio") filed an Application for authority to merge. By its own terms, the Application is a precursor to AEP-Ohio's upcoming Standard Service Offer ("SSO") application. (*See App.*, ¶ 13.) Applicants intend to file that application "soon," and in order to prepare it, they request that their proposed merger be approved "as expeditiously as possible." (*Id.*) The terms and conditions approved by the Commission for the proposed merger thus will directly impact the subsequent SSO application filed by AEP-Ohio.

As set forth below, FES should be permitted to intervene in this proceeding. As a certified competitive retail electric service provider supplying generation service to many of the Applicants' customers, FES will be directly affected by the forthcoming SSO. And because the instant proceeding will bear directly on the SSO, FES should be permitted to protect its economic interests in this case. FES' Motion to Intervene should be granted.

II. ARGUMENT

A. Standard Of Review

Intervention in Commission proceedings is governed by R.C. 4903.221 and Rule 4901-1-11, and those authorities are “liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 384, 387 (noting that under Rule, “intervention ‘shall’ be allowed by the PUCO” if criteria are met), *quoting State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St. 3d 143, 144. Consistent with that approach, the Commission routinely allows parties—including competitive retail energy providers and marketers—to intervene and comment on merger and acquisition proceedings involving utilities. *See, e.g., In re Joint App. of Cinergy Corp. on Behalf of The Cincinnati Gas & Elec. Co. and Duke Energy Holding Corp. for Consent and Approval of a Change of Control of The Cincinnati Gas & Elec. Co., et al.*, Nos. 05-732-EL-MER, *et al.*, Comments to Staff’s Recommendations of Direct Energy Services, dated Dec. 1, 2005; *In re Commission’s Review of the Merger of Allegheny Power Sys., Inc. and DQE, Inc.*, No. 98-114-EL-MER, Comments of MC² Inc., dated Feb. 27, 1998; *In re App. of The East Ohio Gas Co. and West Ohio Gas Co. for Authority To Merge*, No. 96-991-GA-UNC, Comments of Stand Energy Corp., dated Dec. 3, 1996.

Under Rule 4901-1-11, intervention “shall be permitted” upon a showing that:

- “[t]he person has a real and substantial interest in the proceeding”; and
- “the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”

See Rule 4901-1-11(A)(2). In assessing intervention, the Commission also considers:

- “[t]he nature and extent of the prospective intervenor’s interest”;
- “[t]he legal position advanced by the prospective intervenor and its probable relation to the merits of the case”;

- “[w]hether the intervention by the prospective intervenor will unduly prolong or delay the proceedings”;
- “[w]hether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues”; and
- “[t]he extent to which the person’s interest is represented by existing parties.”

See Rule 4901-1-11(B).

Here, FES meets this standard, and it should be allowed to intervene in this proceeding and comment on the proposed transaction.

B. FES Has A Real And Substantial Interest In This Proceeding, And Disposition Of This Case Absent FES’ Participation Will Impair FES’ Ability To Protect That Interest.

FES, a subsidiary of FirstEnergy Corp., has a real and substantial interest in this proceeding. FES is a leading energy supplier serving residential, commercial and industrial customers throughout the Northeast, Midwest and Mid-Atlantic regions of the United States. Based in Akron, FES is a certified retail electric service provider in Ohio and provides competitive service to customers in Applicants’ service territories. *See In re App. of FirstEnergy Solutions Corp. for Certification/Renewal As A Competitive Retail Elec. Service Provider*, No. 00-1742-EL-CRS, Renewal Certificate No. 00-011E(6). The structure, conduct and outcome of Applicants’ forthcoming SSO thus will directly affect FES’ competitive position in AEP-Ohio’s service territory.

The instant merger proceeding bears directly on AEP-Ohio’s forthcoming SSO. In fact, Applicants themselves view this proceeding as a necessary precursor to their SSO filing. In the Application, Applicants indicate their intent to file the SSO application “soon,” and for this reason, they ask that the instant proposed merger be approved “as expeditiously as possible.” (See App., ¶ 13.) Indeed, the SSO proceeding is closely related to this one. Here, the Commission will decide, among other things, the terms and conditions that will govern the

“additional scale” achieved through the merger, which in turn may directly affect the structure and ultimate pricing derived from the consolidated entity’s forthcoming SSO. (*See App.*, ¶ 7.) FES has a real, substantial interest in this proceeding, which necessarily precedes AEP-Ohio’s SSO. (*See id.* at ¶ 13.) None of the other parties who have sought intervention here can adequately represent FES’s interest.

Moreover, because FES has significant experience in supplying competitive electric energy products and in participating in Commission proceedings, FES will bring unique expertise to this case and will meaningfully contribute to the resolution of issues here. *See, e.g., In re App. of Duke Energy Ohio, Inc. to Amend its Elec. Tariff 20 to Increase its CRES Accounts Receivable Purchase Discount Rate*, No. 09-1026-EL-ATA, Mot. to Intervene of FES, dated June 24, 2010; *In re App. of Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co., for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer, et al.*, No. 09-906-EL-SSO, Mot. to Intervene of FES, dated Nov. 25, 2009. FES should be allowed to intervene.

C. FES’ Participation Will Not Unduly Prolong Or Delay This Proceeding.

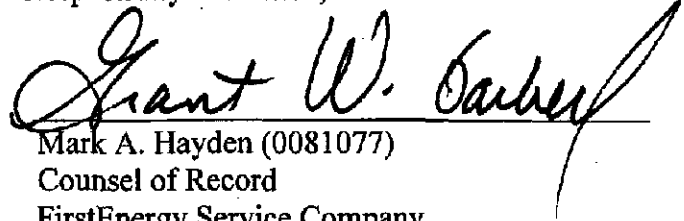
FES’ participation in this proceeding will not unduly prolong or delay it. This proceeding is in its early stages. The Application was filed less than a month ago, and the Commission has not yet issued a procedural schedule or established deadlines for intervention or the filing of comments. FES’ participation will not delay the Commission’s review of the proposed merger. In fact, as described above, FES will meaningfully contribute to the full consideration of the issues presented by this case.

III. CONCLUSION

For the foregoing reasons, FES’s Motion to Intervene should be granted.

Dated: November 8, 2010

Respectfully submitted,



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ATTORNEYS FOR
FIRSTENERGY SOLUTIONS CORP.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion To Intervene and Memorandum in Support of Motion were sent by first class U.S. mail, postage prepaid, to the following this 8th day of November, 2010.

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