

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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

REPLY OF FIRSTENERGY SOLUTIONS CORP.  
IN SUPPORT OF ITS MOTION TO INTERVENE

Ohio Power Company and Columbus Southern Power Company (the "Companies") oppose intervention by FirstEnergy Solutions Corp. ("FES") by arguing that this merger proceeding is "limited" and will have "no bearing" on their rates. (*See* Mem. Contra, p. 1, 2.) But the Companies' bald assertions do not make it so—in fact, they contradict the Companies' own statements. As set forth in the Application, if the proposed merger is approved, the Companies intend to "blend [their] retail rates in future proceedings." (App., ¶ 8.) In such future proceeding, which they intend to file "soon," the Companies will ask the Commission to approve "new rates, terms and conditions for the merged Company." (*Id.* at ¶¶ 8, 13.)

But absent a merger, there will be no blended rates. The "terms and conditions" set in any subsequent proceeding necessarily will be different than if the merger is approved. And even if the merger is approved, the Commission may order that it be subject to terms affecting the structure and conduct of the subsequent standard service offer ("SSO") proceeding. As a certified retail electric service ("CRES") provider, FES has an important economic interest in the structure, conduct and outcome of the Companies' SSO. And because resolution of the instant merger proceeding will have a direct impact on the scope and terms of that SSO, FES has a real and substantial interest in this case and must be permitted to intervene in it. *See* Rule 4901-1-11

(requiring that intervention “*shall be permitted*” upon showing that, among other things, “[t]he person has a real and substantial interest in the proceeding”) (emphasis added).

The Companies dodge this argument, deeming this a “stand alone” proceeding and claiming that “the future SSO filing has no bearing on the merits of Applicants’ proposed merger.” (Mem. Contra, p. 2.) But this has it backwards. FES should be allowed to intervene because the proposed merger will affect the SSO (not the other way around). And far from being a “stand alone” proceeding, the instant case is the first in a series of cases the Companies intend to file if merged. (See App., ¶ 13 (describing future SSO and distribution rate cases).) Although the Companies presumably believe that FES should wait to litigate its positions in those subsequent cases, this will be too late. By the time they are filed, the Commission already may have made important decisions in this case that will shape the SSO (and may have approved the merger entirely). FES will be severely prejudiced—if not entirely foreclosed—in challenging those decisions in a subsequent case. FES should be allowed to address the rate-related effects of the merger *before* it is approved, not after.

The cases cited by the Companies are irrelevant. First, the Companies cite *Ohio Domestic Violence Network*, arguing that because “no hearing is necessary or anticipated,” FES should not be allowed to intervene. (Mem. Contra, pp. 2-3.) Notwithstanding the Companies’ procedural preference that the Commission not hold a hearing on its Application, this case is in its early stages, and the Commission has not yet issued a scheduling order or otherwise indicated whether a hearing will take place. The Companies’ preference regarding the necessity of a hearing is no reason to exclude FES from this proceeding. FES must be allowed to intervene and comment on the proposed merger.

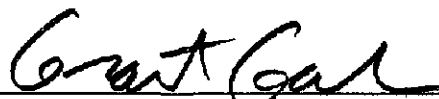
Nor do the Companies' other cited cases support their position. In those cases, the Commission rejected intervention by parties whose interest was merely in the precedential value of a decision. In *WorldCom, Inc., et al. v. City of Toledo*, Nos. 02-3207-AU-PWC, *et al.*, several telephone and electric utilities serving customers within the City of Toledo sought intervention in a case challenging the City's newly-enacted right-of-way ordinances. *See* Entry dated Mar. 4, 2003, Nos. 02-3207-AU-PWC, *et al.*, ¶¶ 4-6. The Examiner **granted** those intervention requests. *See id.* By contrast, the Examiner denied intervention to an industry association that represented utilities operating in areas outside the City that had other right-of-way ordinances, as well as to the Ohio Municipal League, which represents other municipalities. *See id.* at ¶¶ 7, 8. The Examiner held that these parties had "no real and substantial interest in the current case," and that their claimed interests were merely "precedential in nature." *Id.*

In *Dominion Retail Inc. v. Ohio Edison Co., et al.*, No. 00-2526-EL-CSS, a CRES provider sued a utility, alleging that the utility wrongfully refused to allow it to participate in its market support generation program. Entry dated Apr. 19, 2001, No. 00-2526-EL-CSS, ¶ 1. The Examiner denied intervention to a third party CRES provider who alleged that the Commission's decision as to Dominion may affect its ability to offer CRES. *Id.* at ¶¶ 6-7. And in *In re App. of First-Energy Corp. on Behalf of Ohio Edison Co., et al., for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Nos. 99-1212-EL-ETP, *et al.*, the Examiner denied intervention to two electric utilities who sought intervention in the transition plan cases of other utilities to, among other things, "conduct reconnaissance in settlement discussions for use in the settlement discussions in their respective ETP cases," and to "advocate positions concerning their own ETP cases." Entry dated Mar. 23, 2000, Nos. 99-1212-EL-ETP, *et al.*, ¶ 4.

Here, FES' interest is not in the precedential value of a decision. FES does not seek intervention to gain tactical advantage in an unrelated case involving other parties or to shape Commission rulings for use in future hypothetical proceedings. Rather, the Commission's decision in this case will have a direct effect on FES. Its approval of the proposed merger, and any terms it imposes in doing so, will impact FES' ability to compete for retail customers in the Companies' service territories. There is nothing hypothetical about this concern—the Companies will file their SSO "soon," this proceeding is a necessary precursor to that one, and decisions in this case will affect the arguments and options available to the parties and the Commission in the SSO. (See App, ¶ 13 (requesting "expeditious[]" approval of merger so that Companies can prepare subsequent filings).) Because FES has a real and substantial interest in this proceeding and meets the other criteria for intervention, FES must be allowed to intervene in this case.

Dated: November 19, 2010

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of FirstEnergy Solutions Corp. in Support of its Motion to Intervene was sent by first class U.S. mail, postage prepaid, to the following this 19th day of November, 2010.

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