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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

INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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February 25, 2011 **Attorneys for Industrial Energy Users-Ohio**

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A. INTRODUCTION

On October 18, 2010, Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (collectively, "AEP-Ohio") filed an application for authority to merge and to resolve additional matters addressed in its Application. Industrial Energy Users-Ohio ("IEU-Ohio") files these Comments in response to the February 9, 2011 Entry issued by the Public Utilities Commission of Ohio ("Commission"). As noted in more detail below, the merger of OP and CSP as described in the Application is unremarkable, but does present several challenges to customers and regulators.

B. INITIAL COMMENTS

1. The merger as proposed does not modify current legal relationships between an electric distribution utility ("EDU") and its customers.

As the applicants noted, the AEP-Ohio units and their supporting companies have been operating on an integrated basis for several years. As described in the Application, the merger of CSP into OP changes no existing legal relationships between

CSP and its customers.[1] Further, the tariff obligations of CSP will become the responsibility of the merged entity.

2. Customers are concerned about the effect of the merger on future proceedings.

On the other hand, the merger could have dramatic impacts on the future relationship between the merged company and its customers. As demonstrated in the recent Electric Security Plan ("ESP") filings, Case Nos. 11-346-EL-SSO, *et al.*, AEP-Ohio is proposing to consolidate the rate schedules of CSP and OP. The effects on CSP and OP customers will be significant as a result of the rate consolidation. Moreover, the rate effects will be aggravated for some classes of customers due to the generation rate realignment AEP-Ohio has proposed in the ESP filing.[2]

As suggested above, the AEP-Ohio 2011 ESP filing assumes the merger will close before December 31, 2011. Based on that assumption, AEP-Ohio has proposed to consolidate CSP and OP rates. Additionally, AEP-Ohio is proposing a rate realignment that would adjust existing generation rate schedules to reflect AEP-Ohio estimates of the shape of generation rates based on market prices by customer class. The increases caused by rebalancing fall heavily on both residential and industrial

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[1] The Application seeking Federal Energy Regulatory Commission ("FERC") approval of the merger states that the effects of the merger on retail customers have been mitigated; the Application does not account for any retail benefits that might result from the merger. *Columbus Southern Power Co., et al.*, EC11-37-000, Application for Approval of Internal Reorganization under Section 203 of the Federal Power Act at 16-17 at 17-18 (January 18, 2011). A similar concern is raised by the application to the Commission. See below.

[2] As discussed in the testimony of David Roush, AEP-Ohio has proposed to eliminate the use of demand-based charges for generation service and rely exclusively on energy-based charges for generation service. *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.* (hereinafter, "*AEP 2011 ESP Case*"), Testimony of David Roush at 10 (January 27, 2011).

customers and create significant rate shock.[3] Because the transition is so dramatic for some customers, the application proposes to mitigate the effects through a transition rider.[4] Despite the transition rider, rates for some CSP and OP customers will still increase dramatically due to the combined effects of the rate consolidation and realignment. The merger should not impede a careful review of the effects of the proposed rate changes, either in the ESP or as a part of the merger review process.

3. The Commission should ensure that the merger does not interfere with proceedings that should remain company-specific.

The Commission should ensure the merger does not affect current and future proceedings that must remain specific to OP and CSP. For example, the Commission is required to perform an annual review to determine whether OP and CSP are receiving significantly excessive earnings under the current ESP. If the recent proceeding to consider OP's and CSP's 2009 earnings provides procedural guidance, the companies may not make their initial filing to address 2011 earnings until mid-2012, and a Commission order addressing whether OP and CSP had significantly excessive earnings in 2011 may not be forthcoming until early 2013.[5] The Commission's *SEET Order* directed CSP to provide refunds associated with its 2009 earnings to its customers during calendar year 2011. In the event that the Commission found

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[3] *Id.*, David Roush Exhibits and Workpapers, Summary of Proposed and Previous ESP Rate Increases.

[4] As an apparent disincentive to delaying approval of its merger application, AEP-Ohio has offered testimony in the ESP filing that it will seek Commission approval for new rates on a company-specific basis without the smoothing effects of a proposed "market transition rider" if the merger is not closed by December 31, 2011. *Id.*, Testimony of David Roush at 13. Even with the transition rider, customers in certain rate categories are facing double-digit rate increases under the proposed rate structure. *Id.*, David Roush Exhibits and Workpapers, Summary of Proposed and Previous ESP Rate Increases.

[5] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code,* Case No. 10-1261-EL-UNC, Opinion and Order (January 11, 2011) (hereinafter, "*SEET Order*").

significantly excessive earnings for 2011, any required refunds might not occur until 2013. This scenario illustrates that notwithstanding if and when the merger closes, there will be a continuing need to address CSP and OP rates individually. If AEP proceeds with the rate consolidation it has proposed as part of its recent ESP application, the ability of the Commission to address CSP and OP rates individually will be much more difficult.[6]

Likewise, the Commission has established proceedings to review fuel costs of OP and CSP. Although the evidentiary hearings to consider CSP's and OP's 2009 fuel costs have concluded, the Commission has not issued an order in that proceeding. Future audits and proceedings to consider CSP's and OP's fuel costs incurred prior to the consummation of a merger will likely continue for some time after the merger's completion. Any rate adjustments associated with CSP's and OP's fuel costs prior to the consummation of the merger should continue to apply specifically to CSP and OP customers.

A related issue concerns the treatment of deferred fuel costs. As noted in the AEP-Ohio ESP filing, OP is currently expecting that deferred fuel costs under the current ESP will approach $643 million.[7] Under the current corporate structure, OP customers would be responsible for the recovery of those deferrals. The ESP filing, however, recommends that both CSP and OP customers be charged with the recovery

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[6] Although individual company data should remain available through the current ESP period ending in December 2011, that information may not be available going forward. In a federal filing, the American Electric Power Service Corp. notes that Form 1 filings after 2011 will be for the merged entity. *Columbus Southern Power Co., et al.*, Docket No. EC11-37-000, Response of American Electric Power Service Corporation at 8 (served Feb. 23, 2011). Although there was much debate in the recent SEET matter regarding the proper filing requirements for the review process, the retail companies' position essentially adopted by the Commission relied on FERC Form 1 for the application of the earnings test. *SEET Order* at 13 (January 11, 2011).

[7] *AEP 2011 ESP Case*, Testimony of Phillip J. Nelson at 8.

of the deferral.[8] The proposed assignment of a part of this expense to CSP customers thus raises serious legal issues that deserve careful review in either the ESP proceeding or the merger review.

4. Merger savings need to be recognized.

Part of the supporting rationale for the merger is the claim that the merged entity may gain efficiencies by reducing billing system overheads and company-specific financial and regulatory filings. Application at 3; see note 1 *supra* for related claims in the FERC Application for the approval of the merger. To the extent that there are such savings, there should be some benefit to ratepayers for the reduction in costs associated with operating OP and CSP on a more coordinated basis. Likewise, the Commission should be sensitive to any unusual gains that arise because of the merger.[9]

The expected distribution rate filings could serve as a vehicle to address these types of suggested merger benefits.[10] Commission Staff should be directed to consider merger benefits and costs in its Staff Report in the expected distribution case.

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[8] *Id.* at 10.

[9] The consolidated financial reporting associated with the anticipated merger would lend itself to averaging effects that might mask earnings results that are evident when the companies are reviewed individually.

[10] On the same day it filed its ESP application, AEP-Ohio also filed a pre-filing notice of its intent to file a distribution case. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case Nos. 11-351-EL-AIR, *et al.*, Application (January 27, 2011).

C. CONCLUSION

The effects of the merger on several pending matters deserve careful consideration. Rate impacts are evident in the ESP filing while claimed efficiencies are not. Further, the likely distribution case presents an opportunity to make sure that whatever efficiencies are associated with the merger are recognized in distribution rates as well.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 25th day of February, 2011 via first class mail, postage prepaid.

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