

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

- In the Matter of the Application of )  
Columbus Southern Power Company and )  
Ohio Power Company for Authority to ) Case No. 11-346-EL-SSO  
Establish a Standard Service Offer ) Case No. 11-348-EL-SSO  
Pursuant to §4928.143, Ohio Rev. Code, )  
in the Form of an Electric Security Plan )
  
- In the Matter of the Application of )  
Columbus Southern Power Company and ) Case No. 11-349-EL-AAM  
Ohio Power Company for Approval of ) Case No. 11-350-EL-AAM  
Certain Accounting Authority )
  
- In the Matter of the Application of Columbus )  
Southern Power Company to Amend its ) Case No. 10-343-EL-ATA  
Emergency Curtailment Service Riders )
  
- In the Matter of the Application of Ohio )  
Power Company to Amend its Emergency ) Case No. 10-344-EL-ATA  
Curtailment Service Riders )
  
- Application Not for an Increase in Rates )  
Pursuant to Section 4909.18, Revised Code, )  
Of Ohio Power Co. and Columbus Southern )  
Power Company to Establish New Market ) Case No. 11-531-EL-ATA  
Based rate for Returning CRES Customers )  
that Elected to Avoid the POLR Charge )
  
- In the Matter of the Application of Ohio )  
Power Company for Approval of the )  
Shutdown of Unit 5 of the Phillip Sporn ) Case No. 10-1454-EL-RDR  
Generating Station and to Establish a Plant )  
Shutdown Rider )
  
- In the Matter of the Commission Review of )  
The Capacity Charges of Ohio Power )  
Company Columbus Southern Power ) Case No. 10-2929-EL-UNC  
Company )

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**COLUMBUS SOUTHERN POWER COMPANY'S  
AND OHIO POWER COMPANY'S  
MEMORANDUM IN OPPOSITION TO THE MOTION TO CONSOLIDATE OF  
INDUSTRIAL ENERGY USERS- OHIO**

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## INTRODUCTION

The Industrial Energy Users-Ohio (IEU) seeks to consolidate five cases into one mega-proceeding: (1) *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 Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO (“ESP Renewal Cases”); (2) *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders and In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (“ECS Cases”); (3) *Application Not for an Increase in Rates Pursuant to Section 4909.18, Revised Code, Of Ohio Power Co. and Columbus Southern Power Company to Establish New Market Based Rate for Returning CRES Customers that Elected to Avoid the POLR Charge*, Case No. 11-531-EL-ATA (“Market Rate Tariff Case”); (4) *In the Matter of the Application of Ohio Power Company for Approval of the Shutdown of Unit 5 of the Phillip Sporn Generating Station and to Establish a Plant Shutdown Rider*, Case No. 10-1454-EL-RDR (“Sporn 5 Case”); and (5) *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 (“Capacity Charge Case”). Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (collectively, “the Companies” or AEP Ohio”) oppose the IEU request. Consolidation is only warranted where: (i) there is a substantial commonality of question of law and fact among all of the involved cases, (ii) the parties are substantially the same in all of the involved cases, (iii) whether consolidation is an efficient use of resources, and (iv) consolidation should not unduly delay or otherwise prejudice the interests raised in the separate cases. As explained in greater detail below, IEU’s overbroad request fails under each of these four factors and should be denied.

## ARGUMENT

### I. Consolidation of all the cases is not warranted

Section 4903.22, Revised Code, provides that “[e]xcept when otherwise provided by law, all processes in actions and proceedings in a court arising under Chapters 4901., 4903., 4905., 4906., 4907., 4909., 4921., 4923., and 4927. of the Revised Code shall be served, and the practice and rules of evidence in such actions and proceedings shall be the same, as in civil actions. Accordingly, Civ.R. 42 regarding consolidation of cases applies to IEU’s consolidation request. Under Civ.R. 42(A), a major consideration is whether there is substantial commonality of questions of law or fact between the involved cases and whether the parties are substantially the same. *Waterman v. Kitrick*, 60 Ohio App.3d 7 (1990) citing *Dir. of Highways v. Kleines*, 38 Ohio St.2d 317 (1974). Before the actions may be properly consolidated, the Commission must determine “if there is enough commonality of issues to warrant consolidation and if the parties are substantially the same.” *Waterman v. Kitrick*, 60 Ohio App.3d 7 (1990) citing *Miller v. Beard*, 73 O.O.2d 10 (App.1955). Further, in making a determination of whether to consolidate, the Commission “should be mindful of the purpose of consolidation, which is the saving of time when a joint [hearing] is used as opposed to separate [hearings].” *Waterman v. Kitrick*, 60 Ohio App.3d 7, 14 (1990). Finally, as with any procedural motion, the Commission should ensure that any consolidation does not unduly delay or otherwise prejudice the interests present in the involved proceedings. As set forth below, consideration of each of these four factors yields the clear conclusion that IEU’s request should be denied.

No substantial commonality of issues exists across the five cases involved in IEU’s consolidation request. While there are related issues that are related between some of the five cases involved in IEU’s request for consolidation, the same issues are not presented in the five cases. Further, to the extent that the Commission’s determination of an issue in one of the cases

is considered to be dispositive of an issue in another case, that “precedent” effect will occur automatically without consolidation. Even if one were to conclude that one or more of the issues presented in one of the cases is also an issue that is present in another one of the cases, there are lots of different issues between the cases. More to the point, there is not a substantial commonality of issues between the five cases involved to warrant consolidation.

For example, the Market Rate Tariff case involves a narrow and discrete issue of what market rate to charge returning customers that have shopped for generation service and elected to bypass the POLR charge. That proceeding relates to AEP Ohio’s existing ESP and merely implements a provision created by the Commission on page 40 of the Opinion and Order in the original ESP Cases. This issue needs to be decided to address the contingency of returning customers and, because it relates to the original ESP decision, should not be deferred until a decision in the ESP Renewal Cases. The issue of what market rate to charge returning customers does not overlap with the distinct issues presented in the ESP Renewal Cases regarding the continuation and modification of the underlying POLR Charge.

The Capacity Charge Case as another example involves wholesale rate matters and not retail rate matters like the ESP Cases. The issues in the Capacity Charge case involve the appropriate charge for wholesale CRES providers to pay AEP Ohio for use of their capacity resources – those matters do not overlap with the retail rate issues presented in the Renewal ESP Cases. Nor do the issues in the Capacity Charge Case overlap with the Market Rate Tariff Case, the ECS Cases or the Sporn 5 Case.

The parties are not substantially the same across all of the cases. The table below lists the various parties and the cases in which they have sought to intervene.

| INTERVENORS                            | ESP<br>Renewal | ECS | Market<br>Rate Tariff | Sporn 5 | Capacity<br>Charge |
|--|----------------|-----|-----------------------|---------|--------------------|
| AEP Retail                             | X              |     |                       |         |                    |
| Appalachian Peace &<br>Justice Network | X              |     |                       |         |                    |
| CPower Group                           |                | X   |                       |         |                    |
| Constellation Energy<br>Group          |                | X   |                       |         | X                  |
| Direct Energy                          |                |     |                       |         | X                  |
| Duke Energy                            | X              |     |                       |         | X                  |
| EnerNOC                                |                | X   |                       |         |                    |
| Exelon Generation<br>Company           |                |     |                       |         | X                  |
| First Energy Solutions                 |                |     |                       |         | X                  |
| Hess Corporation                       |                | X   |                       |         |                    |
| Industrial Users-Ohio                  | X              | X   | X                     | X       | X                  |
| KOREnergy                              |                | X   |                       |         |                    |
| Kroger                                 | X              |     |                       |         |                    |
| Ohio Consumers' Counsel                | X              | X   | X                     | X       | X                  |
| Ohio Energy Group                      | X              | X   |                       | X       | X                  |
| Ohio Environmental<br>Council          |                |     |                       | X       |                    |
| Ohio Hospital Association              | X              |     |                       |         | X                  |
| Ohio Manufactures'<br>Association      | X              |     |                       |         | X                  |
| Ohio Partners for<br>Affordable Energy | X              |     |                       | X       | X                  |
| Ormet Primary Aluminum                 |                | X   |                       |         |                    |
| Paulding Wind Farm                     | X              |     |                       |         |                    |
| Sierra East Inc.                       |                |     |                       | X       |                    |
| Wal Mart Stores and<br>Sam's East      |                |     |                       | X       |                    |

As shown by the above Table of Intervenors, there is a distinct lack of commonality between the groups of parties in the five cases. Indeed, none of the five cases have identical parties and the overlap between the cases is rather limited. Besides the Companies, only OCC and IEU are parties in all five cases. It is inefficient and burdensome *requiring* parties participate in the larger and more complex proceeding without having intervened or intended to do so. As a related matter, *allowing* parties with limited interests to now litigate a much broader set of issues when they did not seek to intervene in a timely fashion. Further, doing so would also jeopardize AEP Ohio's interests in moving the separate cases forward based on the participation of parties that have an interest and that have pursued that interest by moving to intervene in a timely fashion.

As a related matter, consolidation of all of the cases is not an efficient use of resources. The ESP Renewal Cases involve dozens of issues and will likely become a complex case for

discovery, hearing and litigation. Adding an even larger set of "related" issues does not promote efficiency. All of the parties involved in every one of the five cases (which are diverse as set forth above) would be involved in a hearing, cross examination, review discovery and a multitude of pleadings and briefs involving additional issues from cases that the party did not have an interest in or seek to intervene and participate in. In this regard, the issues in the ECS Cases and the Market Rate Tariff Case are much narrower in scope and can be adjudicated separately in a more efficient manner. Similarly, the wholesale Capacity Charge Case is also a proceeding that should end up going to hearing and will likely prove to be a substantial and complex litigation proceeding in and of itself. Combining all of the cases into one mega-proceeding is not an efficient use of time or resources.

Consolidation results in undue delay and prejudices the interests presented by AEP Ohio in filing each of the cases. The five cases involved in IEU's request for consolidation are at different stages of litigation and putting them all on the same track results in undue delay and prejudices the interests presented by AEP Ohio in filing each of the cases. Distinct from the problems outlined above regarding an inefficient litigation approach, another problem associated with the proposed consolidation is that it would unduly delay cases that are already ripe for decision, such as the ECS Cases and the Market Rate Tariff Case. Other cases like the Capacity Charge Case and the Sporn 5 Case do not yet have litigation schedules and would likely be processed on different time tables than the ESP Renewal Cases that do have an established schedule.

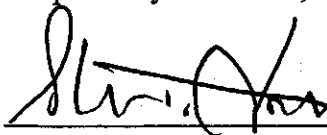
Another significant factor in this regard is that the ESP Renewal Cases already have a litigation schedule that did not contemplate adding such a substantial load of additional issues and litigation in the same time frame. In this regard, the Commission is subject to a statutory deadline for deciding the ESP Renewal Cases and injecting additional issues into that proceeding would only make it more difficult for the Commission to issue a timely decision in the ESP

Renewal Cases. In short, the ESP Renewal Cases already present vitally important issues to AEP Ohio and the Companies are entitled to focused and deliberate consideration of its proposals within the limited time the Commission has to decide the case. Consolidation of the ESP Renewal Cases with all of the other cases would make that task even more difficult.

### CONCLUSION

For the reasons outlined above, IEU's broad request to consolidate is not supported and should be denied.

Respectfully submitted,



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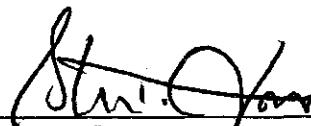
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Columbus Southern Power Company's and Ohio Power Company's Memorandum in Opposition was served on the persons stated below by U.S. First Class Mail, this 7<sup>th</sup> day of March 2011.



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