

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Columbus Southern Power Company and ) Case Nos. 11-346-EL-SSO  
Ohio Power Company for Authority to ) 11-348-EL-SSO  
Establish a Standard Service Offer )  
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 Nos. 11-349-EL-AAM  
Ohio Power Company for Approval of ) 11-350-EL-AAM  
Certain Accounting Authority. )

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**FIRSTENERGY SOLUTIONS CORP.'S  
MOTION TO DISMISS  
OR IN THE ALTERNATIVE TO STRIKE**

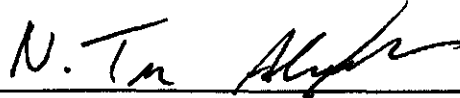
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Intervenor, FirstEnergy Solutions Corp. ("FES"), hereby moves the Commission for an order dismissing the above captioned Application. As set forth more fully in the attached Memorandum in Support, FES seeks dismissal of the Application because it fails to provide the supporting information required by R.C. § 4928.143 and the Commission's Rules for electric security plans and, as a result, fails to make even a *prima facie* showing that the proposed ESP is more favorable in the aggregate than the expected results that would otherwise apply under an MRO.

In the alternative, FES respectfully moves for an order striking, in part, the testimony of Laura Thomas to the extent it relies upon capacity cost data filed by AEP Ohio in Case No. 10-2929-EL-UNC. Although Ms. Thomas relies upon this data, she is not sponsoring it and AEP Ohio has refused to identify any other witness that will. Thus, this part of her testimony should be stricken.

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Respectfully submitted,



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PUBLIC UTILITIES COMMISSION OF OHIO

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Certain Accounting Authority.	)	

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**MEMORANDUM IN SUPPORT OF  
FIRSTENERGY SOLUTIONS CORP.'S MOTION TO DISMISS  
OR IN THE ALTERNATIVE TO STRIKE**

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**I. The Application Should Be Dismissed Because It Fails to Make a Prima Facie Showing that The Proposed ESP is More Favorable in the Aggregate than the Expected Results of an MRO.**

Am. Sub. Senate Bill 221 ("S.B. 221") allows electric distribution utilities to provide standard service offer ("SSO") service through either of two forms: an electric security plan under R.C. § 4928.143 (an "ESP"), or a market-rate offer under R.C. § 4928.142 (an "MRO"). R.C. § 4928.141. An electric distribution utility seeking to provide SSO service through an ESP must meet one clear and straightforward test:

[T]he commission by order shall approve or modify and approve an application [for an ESP] if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under [an MRO].

R.C. § 4928.143(C)(1) (emphasis added). This test is not limited to a price comparison, as recently confirmed and emphasized by the Ohio Supreme Court: "On the contrary, in evaluating

the favorability of a plan, the statute instructs the commission to consider ‘pricing *and all other terms and conditions.*’” *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 402, 945 N.E.2d 501, 2011-Ohio-958, ¶ 27 (2011) (emphasis in original). The EDU bears the burden of proof in establishing that a proposed ESP should be approved. *Id.* To that end, the Commission’s rules require that an applicant-EDU provide testimony in support of its application that “fully support[s] all schedules and significant issues identified by the electric utility,” and provide a “complete description of the ESP and testimony explaining and supporting each aspect of the ESP.” O.A.C. 4901:1-35-03(A), (C)(1).

In this proceeding, Columbus Southern Power Company and Ohio Power Company (collectively, “Applicants”) misinterpreted the “in the aggregate” test that must be satisfied in order to obtain approval of an ESP and, as a result, have not provided any evidence that could support approval of their proposed ESP. Specifically, Applicants provide no testimony or evidence supporting that the proposed ESP is, “including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, . . . more favorable in the aggregate” than the expected results of an MRO. R.C. § 4928.143(C)(1). This statutory standard is referenced in the testimony of Laura J. Thomas and/or Joseph Hamrock. Yet Mr. Hamrock relies upon Ms. Thomas to compare the proposed ESP to an MRO, and Ms. Thomas’s testimony fails to provide the analysis required by R.C. § 4928.143 and the Commission’s rules. *See Hamrock Testimony*, pp. 26-27 (comparison of ESP to MRO “is substantiated by the MRO test discussed and represented in Company witness Thomas’s testimony”); *see, generally*, *Thomas Testimony*.

Mr. Hamrock’s testimony provides no support for R.C. § 4928.143’s test for approval of a proposed ESP. His testimony ignores the statutory standard in that he asserts that the proposed

ESP is “reasonable” and “best serves the public interest by offering a **price** that is more favorable in the aggregate than the expected results under an MRO.” Hamrock Testimony, p. 26 (emphasis added). He makes no effort to satisfy the “in the aggregate” test required by law and re-emphasized by the Ohio Supreme Court, which necessarily demands an examination of much more than the ESP generation price.

Likewise, Ms. Thomas provides only a comparison of purported ESP generation prices to MRO generation prices – which also is not the statutory standard. Indeed, she admits that the purpose of her testimony on this subject is limited to a comparison of MRO prices to the Applicants’ proposed ESP “generation prices.” Thomas Testimony, pp. 2-3; *see also id.* at Exh. LJT-2. She explains that her testimony is based on some unidentified (and hearsay) “advi[ce] by counsel” that the proposed ESP must satisfy an “MRO price test.” *Id.* at p. 3. *Id.* But R.C. § 4928.143 does not include an “MRO price test.” Rather, the statute requires a comparison of the **aggregate impact of the ESP, including “its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals”** to the expected results of an MRO. R.C. § 4928.143 (emphasis added).

Ms. Thomas’s testimony uses only a comparison ESP “generation price” that was provided by Applicants’ witness Roush. Mr. Roush developed the proposed ESP generation prices by adding “the proposed base generation prices, 2011 full cost [Fuel Adjustment Clause] and [Environmental Investment Carrying Cost Rider]” and then “adjust[ing] the ESP generation prices to reflect the fact that certain generation costs included in [the Applicants’ Transmission Cost Recovery Rider] must be included to be comparable to the market generation prices.” Roush Testimony, p. 10. However, such a comparison of ESP generation **price** does not include the aggregate provisions of the ESP. Indeed, it represents only a subset of the total expected

ESP price. Based on Mr. Roush's analysis, Ms. Thomas's testimony regarding the comparison of the MRO to the ESP does not incorporate, for example, the impact of the Generation NERC Compliance Cost Recovery Rider, the Generation Resource Rider, the Carbon Capture and Sequestration Rider, the Market Transition Rider, the Facility Closure Cost Recovery Rider, the Pool Termination or Modification Provision, or the Provider of Last Resort Charge – all of which are part of the ESP and which cannot be said to be part of the expected results of an MRO. Thus, Ms. Thomas has not compared the ESP price to the expected MRO price. Indeed, by excluding any analysis of the full ESP price, and artificially limiting the comparison to a misleadingly small subset of the ESP's provisions, AEP has provided a facially and fatally deficient Application.

Additionally, Ms. Thomas' Generation Service Price may not be "the electric distribution utility's most recent standard service offer price" required by R.C. § 4928.142(D) when transitioning to an MRO. When comparing an ESP to an MRO, ninety percent of the first-year MRO price is the most recent SSO price. By virtue of the Commission's May 4, 2011 and May 25, 2011 Entries in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO and the pending proceedings on remand regarding AEP's current ESP, the "Base ESP 'g' Rate" used by Ms. Thomas to calculate the Generation Service Price may not accurately reflect the most recent SSO price that will be in effect on December 31, 2011, because environmental carrying cost charges associated with investments made 2001-2008 may be removed from base rates as a result of the Commission's review on remand. Because this would reduce the projected MRO price, it is likely that even her own flawed calculation would show that the ESP price is not more favorable than the projected MRO price. Regardless, Applicants lack any record evidence now to satisfy the statutory standard.

Moreover, several other provisions of the proposed ESP are not included in Ms. Thomas' analysis. The Application includes no quantification of the impact of the ESP riders on customers or on the aggregate impact of the ESP. The Commission has relied in the past upon such quantitative analyses in approving ESPs. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison 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 No. 08-935-EL-SSO, Second Opinion and Order, dated Mar. 25, 2009 at pp. 19-20 (relying on testimony from the EDU-applicants and Staff as to an estimated \$100 million in "net benefits" of the aggregate proposed ESP as compared to the expected results of an MRO). The Application also fails to take into account the multiple anti-competitive aspects of the ESP. In sum, Ms. Thomas' analysis, specifically, and the Application, generally, fail to provide any information in support of the statutory standard.

Applicants have failed to provide any evidence that their proposed ESP *in the aggregate* is more favorable than the expected results of an MRO. R.C. § 4928.143(C)(1). The simplistic and incomplete price comparison offered by Ms. Thomas does not begin to satisfy the legal standard. As noted above, the Ohio Supreme Court has emphasized that the statute **requires** the Commission to "consider more than price" in assessing a proposed ESP. *See In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 402, 945 N.E.2d 501, 2011-Ohio-958, ¶ 27. This is not a question of whether the weight of the evidence sustains Applicants' position. To the contrary, Applicants have provided **no** evidence required to meet their burden because they have fatally misinterpreted what R.C. § 4928.143(C)(1) requires. Therefore, the Application should be dismissed until such time as the Applicants provide testimony and analyses in support of the

required legal standard. Accordingly, FES respectfully requests that the Commission grant this Motion to Dismiss and dismiss the Application for failure to comply with the statutory and regulatory requirements for ESPs.

**II. Ms. Thomas' Testimony Based On Data Filed In Case No. 10-2929-EL-UNC Should Be Stricken from the Record.**

The second largest component of Ms. Thomas' Competitive Benchmark Price is the capacity cost, as shown on her Exhibit LJT-1. She states in her testimony that "this item includes the capacity cost that a CRES (competitive retail electric service) provider would incur to serve a retail customer in AEP Ohio's service territory." Thomas Testimony p. 7. However, this statement is contradicted by the very next sentence, which explains that, instead of using the retail price for capacity, she used a cost-based rate "based on the rates provided in AEP Ohio's Initial Comments filed in Case No. 10-2929-EL-UNC on January 7, 2011." *Id.* Thus, her entire support for the capacity price element used in calculating the Competitive Benchmark Price is an initial (and still contested) pleading filed by Applicants in a separate Commission proceeding.

When FES served a document request upon Applicants in this proceeding requesting all work papers, electronic files, assumptions and calculations that Applicants used to develop the capacity component rates filed in Case No. 10-2929-EL-UNC on January 7, 2011, Ms. Thomas responded that she is not sponsoring the requested documents. *See Applicants' Response to FES RFD-005*, attached hereto as Exhibit A. Instead, she intends only to rely upon them, and instead of producing the documents requested, she merely referred FES to the January 7, 2011 filing. *Id.*

Because of Ms. Thomas' reticence to support or in any way defend the capacity costs filed in Case No. 10-2929-EL-UNC, FES asked Applicants to identify "the individual(s) responsible for developing the capacity cost filing with FERC, which was attached to AEP's Initial Comments in Case No. 10-2929-EL-UNC on January 7, 2011." *See Applicants' Response*



to INT-04-011, attached hereto as Exhibit B. On or about May 12, 2011, Applicants' responded that "the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." *Id.* Applicants provided no substantive answer to FES's request, thereby refusing to identify the person or persons responsible for compiling the cost data relied upon by Ms. Thomas. As such, Applicants have taken the position that this cost data is not sponsored by any witness in this case and, moreover, that any person with actual knowledge of that data is not in any way relevant to or necessary to further proceedings in this case. FES is willing to take Applicants at their word and, as a result, must move to have all testimony of Ms. Thomas that relies upon this cost data stricken from the record.

The elements of her testimony that must be stricken are page 7, lines 14-16 (starting with "The"); page 9, lines 13 and the following table (which includes her unsupported capacity price in the competitive benchmark price); page 12, line 10; LJT-1, lines 4 and the total in each table; and LJT-2, lines 8, 10, 11 and 13.

Applicants will be free thereafter to use "the capacity cost that a CRES (competitive retail electric service) provider would incur to serve a retail customer in AEP Ohio's service territory" as stated in Ms. Thomas' testimony, which this Commission recently ordered in its December 8, 2010 Entry in Case No. 10-2929-EL-UNC shall be "the current capacity charges established by the three-year capacity auction conducted by PJM, Inc." This is, of course, the competitive auction results of the PJM Reliability Pricing Model, which is the same source used by Applicants in their first ESP proceeding.<sup>1</sup> In no case, however, given that Applicants have

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<sup>1</sup> Direct Testimony of J. Craig Baker on Behalf of Columbus Southern Power Company and Ohio Power Company, Case No. 08-917-EL-SSO and 08-918-EL-SSO, filed July 31, 2008 ("Baker Testimony"), at 11.

refused to provide a supporting witness for the capacity costs filed in Case No. 10-2929-EL-UNC, should they be permitted to rely upon the cost data filed therein.

### III. Conclusion

For the forgoing reasons, FES respectfully asks that the Commission issue an entry dismissing without prejudice Applicants' Application in its entirety for failing to make even a *prima facie* showing that the proposed ESP is more favorable in the aggregate than the expected results that would otherwise apply under an MRO. In the alternative, if the Application is not dismissed in its entirety, the Commission should strike all portions of Ms. Thomas' testimony that rely upon the unsupported cost data filed in Case No. 10-2929-EL-UNC.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Dismiss of FirstEnergy Solutions Corp.* and the *Memorandum in Support* thereof was served this 9th day of June, 2011, via e-mail upon the parties below.

  
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**COLUMBUS SOUTHERN POWER COMPANY'S  
AND OHIO POWER COMPANY'S RESPONSES TO  
FIRSTENERGY SOLUTIONS CORP.'S  
DATA REQUEST  
CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO  
FIRST SET**

**INTERROGATORY**

RPD-005      Referring to page 7:14-16 of Ms. Thomas' testimony: All work papers, electronic files (with formulas intact), assumptions, and calculations that were utilized to develop the capacity component rates provided in AEP-Ohio's Initial Comments filed in Case No 10-2929- EL-UNC on January 7, 2011, including identification of all sources of all of the underlying data used

**RESPONSE**

Company witness Thomas does not sponsor the requested documents but relies upon the Company's proposal in Case No 10-2929-EL-UNC as input for portions of her testimony and exhibits. As explained on page 22 of the testimony of Company witness Thomas, the Company proposes that compliance calculations reflecting final ESP rates, Competitive Benchmark prices and switching rules be performed. As such, those calculations would reflect the outcome of Case No. 10-2929-EL-UNC if the Commission issues a decision in that case prior to a decision in this ESP case. Notwithstanding the above, see the Company's January 7, 2011 filing in Case No 10-2929-EL-UNC for the requested information.

Prepared By: Counsel

**COLUMBUS SOUTHERN POWER COMPANY'S  
AND OHIO POWER COMPANY'S RESPONSE TO  
FIRSTENERGY SOLUTIONS  
DISCOVERY REQUEST  
CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO  
FOURTH SET**

**INTERROGATORY**

INT-4-011. Please Identify the individual(s) responsible for developing the capacity cost filing with FERC, which was attached to AEP's Initial Comments in Case No. 10-2929-EL-UNC on January 7, 2011.

**RESPONSE:**

The Company objects to the extent the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Prepared by: Counsel