

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 Pursuant) Case No. 11-348-EL-SSO
to Section 4928.143, Revised 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.)

ENTRY

The Attorney Examiner finds:

- (1) On January 27, 2011, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. The application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (2) By entry issued February 9, 2011, as revised by entries issued March 23, 2011, and June 9, 2011, a procedural schedule was established in these matters. In accordance with the procedural schedule, the deadline for filing motions to intervene was March 14, 2011.
- (3) Motions to intervene in these proceedings, along with requests for leave to file out of time, were filed, on various dates following the intervention deadline of March 14, 2011, by Dominion Retail, Inc. (Dominion Retail), Environmental Law and Policy Center (ELPC), Ohio Environmental Council (OEC), Ormet Primary Aluminum Corporation (Ormet) and Enernoc, Inc. (Enernoc). Dominion Retail is a Commission-certified competitive retail electric service provider authorized to offer competitive retail electric service to customers within AEP-Ohio's service territory. ELPC is a non-profit, environmental advocacy organization whose mission is to improve the Midwest's environmental quality and economic development.

OEC is a non-profit, charitable organization whose mission is to secure a healthier environment for all Ohioans. Ormet is a large industrial customer purchasing its generation, transmission, and distribution service under a Commission-approved unique arrangement with AEP-Ohio.

- (4) Dominion Retail, ELPC, OEC, and Ormet state that they have a real and substantial interest in these matters that is not represented by another party. Further, each motion asserts that the disposition of these proceedings may adversely affect the movant's ability to protect that interest. No party filed a memorandum contra any of the motions.
- (5) Enernoc is a provider of demand response and energy efficiency services to Ohio retail customers. Enernoc asserts that its interest, in how demand response and energy efficiency services are offered to Ohio's retail customers, is directly related to the merits of the proceedings and such interest may be impaired or impeded as a result of the outcome in these matters. Enernoc filed its motion to intervene on May 27, 2011.
- (6) AEP-Ohio filed a memorandum contra Enernoc's motion to intervene. In the memorandum contra, AEP-Ohio argues that Enernoc's motion to intervene fails to identify any extraordinary circumstances to justify the late-filed motion or to justify its failure to comply with the established procedural schedule in accordance with Rule 4901-1-11(F), Ohio Administrative Code (O.A.C.). Further, AEP-Ohio contends that Enernoc did not assert that it brings any unique knowledge, experience, or expertise to these proceedings which is not offered by the other intervenors.
- (7) On June 20, 2011, Enernoc filed a reply. Enernoc states that its motion met the standard for intervention demonstrating good cause under Section 4903.221(A), Revised Code, and states that its intervention will not delay the proceedings.
- (8) The Attorney Examiner finds that Dominion Retail, ELPC, OEC, and Ormet may significantly contribute to the resolution of the issues presented and that intervention at this time will not unduly delay the proceedings, particularly due to their representations that they are each willing to accept the current posture of the proceedings. The Attorney Examiner further

finds that, in light of the fact that the intervention standard has been satisfied, the motions to intervene of Dominion Retail, ELPC, OEC, and Ormet should be granted, notwithstanding the failure to file the motions by the deadline for intervention.

- (9) In regards to Enernoc and AEP-Ohio's opposition to their late-filed motion to intervene, the Attorney Examiner finds that the request should be granted. Motions to intervene are to be liberally construed in favor of intervention. *Consumers' Counsel v. Pub. Util.* 111 Ohio St.3d 384 at 387. In light of the revised procedural schedule, as revised in accordance with the entry issued June 9, 2011, Enernoc's representation that it will abide by the procedural schedule, and that its intervention will not delay the proceedings, the Attorney Examiner grants Enernoc's request for intervention.
- (10) Motions for admission *pro hac vice* were filed on behalf of Shannon Fisk, representing the Natural Resources Defense Council and the Sierra Club, and by Emma F. Hand, in Case No. 11-346-EL-SSO, and Douglas G. Bonner, in Case No. 11-348-EL-SSO, representing Ormet. No memoranda contra the motions for admission *pro hac vice* were filed. The Attorney Examiner finds that the motions for admission *pro hac vice* are reasonable and should be granted.
- (11) On July 1, 2011, AEP-Ohio filed a motion for leave to file additional testimony and to adjust the procedural schedule, as necessary, to accommodate the filing of supplemental testimony concerning the Turning Point Solar Project. AEP-Ohio notes that filing of this supplemental testimony was requested by the March 23, 2011, entry where the Attorney Examiner granted the Companies' request for a waiver of Rules 4901:1-35-03(C)(3) and 4901:1-35-03(C)(9)(b), O.A.C. AEP-Ohio argues that the supplemental testimony on the Turning Point Solar Project was being filed well in advance of the current testimony and discovery deadlines. Accordingly, the Companies did not believe that any adjustments to the current schedule were necessary. However, to the extent that the Commission determines to allow extra time for intervenor testimony or discovery, AEP-Ohio requests that such extensions be limited to the issues raised in the supplemental testimony.

- (12) On July 7, 2011, memoranda contra AEP-Ohio's July 1, 2011, motion for leave to file additional testimony and adjust the procedural schedule concerning the Turning Point Solar Project was filed by Industrial Energy Users-Ohio (IEU-Ohio), Wal-Mart Stores East, LP and Sam's East, Inc., collectively by Exelon Generation Company, LLC, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., and FirstEnergy Solutions Corp., and the Office of the Ohio Consumers' Counsel (OCC) (hereafter collectively referred to as "movants"). Although proposing various modifications to the current procedural timelines, collectively the movants all seek extension of the dates for filing testimony by intervenors as well as a shortening of the discovery response time frames. In addition, OCC and IEU-Ohio recommend postponing the start of the hearing in this matter. However, no party expressed an objection to AEP-Ohio filing additional testimony regarding the Turning Point Solar Project.
- (13) The Attorney Examiner determines that AEP-Ohio's motion for leave to file additional testimony related to the Turning Point Solar Project is reasonable and is, therefore, granted. Having fully reviewed AEP-Ohio's July 1, 2011, motion as well as the movants' memoranda contra, the Attorney Examiner determines that the procedural schedule should be modified as follows:
- (a) July 25, 2011 - All intervenor testimony due, including testimony on the Turning Point Solar Project;
 - (b) July 29, 2011 - Staff testimony due;
 - (c) August 1, 2011 - Conclusion of discovery, except for notices of depositions;
 - (d) August 9, 2011 - Prehearing conference; and
 - (e) August 15, 2011 - Commencement of the hearing.

The August 9, 2011, prehearing conference shall be held at 10:00 a.m. in hearing room 11-A at the offices of the Commission, 180 East Broad Street, Columbus, Ohio. A telephone bridge will be reserved for the prehearing conference

and counsel for the parties will be notified of the bridge number.

- (14) In light of the time remaining before the commencement of the hearing on August 15, 2011, hereafter any motion made in these proceedings, and any memoranda contra shall be required to be filed within five business days after the service of such motion, and any reply memorandum within three business days after the service of a memorandum contra.¹ Paragraph (B) of Rule 4901-1-07, O.A.C., which permits three additional days to take action if service is made by mail, will not apply. Further, parties are directed to serve all pleadings on other parties to these proceedings by e-mail, preferably, or in the event e-mail is not feasible, by facsimile transmission. Parties shall continue to file hard copies with the Commission's Docketing Division.
- (15) In addition, response time for discovery should be shortened to 10 days. Discovery requests and replies shall be served by hand delivery, e-mail, or facsimile (unless otherwise agreed by the parties). An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming (unless otherwise agreed by the parties). To the extent that a party has difficulty responding to a particular discovery request within the 10-day period, counsel for the parties should discuss the problem and work out a mutually satisfactory solution.

It is, therefore,

ORDERED, That the motions to intervene and requests for leave to file out of time filed by various parties be granted in accordance with findings (8) and (9). It is, further,

ORDERED, That the motions for admission *pro hac vice* filed by various individuals be granted in accordance with finding (10). It is, further,

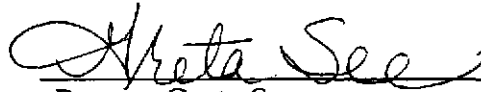
ORDERED, That the procedural schedule be modified as set forth in finding (13). It is, further,

¹ Note that the time period has been revised from calendar days, as the parties were previously informed at the conference, to business days.

ORDERED, That the response time frames for responding to motions and for responding to discovery requests be shortened in accordance with findings (14) and (15). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

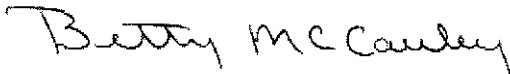
THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Greta See
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Betty McCauley
Secretary