

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Ohio Power Company and Columbus) Case No. 10-2376-EL-UNC
Southern Power Company for Authority)
to Merge and Related Approvals.)

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) Case No. 10-343-EL-ATA
Amend its Emergency Curtailment)
Service Riders.)

In the Matter of the Application of)
Ohio Power Company to Amend its) Case No. 10-344-EL-ATA
Emergency Curtailment Service Riders.)

In the Matter of the Commission Review)
Of the Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
Company and Columbus Southern)
Power Company.)

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 11-4920-EL-RDR
for Approval of a Mechanism to Recover)
Deferred Fuel Costs Ordered Under)
Ohio Revised Code 4928.144)

In the Matter of the Application of)
Ohio Power Company for Approval of a)
Mechanism to Recover Deferred Fuel) Case No. 11-4921-EL-RDR
Costs Ordered Under Ohio Revised)
Code 4928.144)

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**MEMORANDUM OF INDUSTRIAL ENERGY USERS-OHIO IN RESPONSE TO
JOINT MOTION TO CONSOLIDATE**

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September 14, 2011

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**MEMORANDUM OF INDUSTRIAL ENERGY USERS-OHIO IN RESPONSE TO
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I. INTRODUCTION

On January 27, 2011, the Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (collectively "the Companies") filed a joint application seeking to implement new terms under an Electric Security Plan ("ESP") pursuant to Section 4928.143, Revised Code. On September 7, 2011, the Companies, several intervenors, and Commission Staff filed a Stipulation and Recommendation ("Partial Stipulation") that attempted to resolve the ESP Application and several other pending cases filed by the Companies. On September 7, 2011, the Attorney Examiners issued an oral order setting the Partial Stipulation for hearing on October 4, 2011.

On September 8, 2011, the Companies, Commission Staff, and several intervenors¹ supporting the Partial Stipulation filed a Joint Motion to Consolidate seeking a single proceeding for purpose of considering adoption of the Partial Stipulation.² IEU-Ohio recommends that the motion be granted. Further, IEU-Ohio requests that the Commission clarify the procedural posture of *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, because that matter is currently subject to procedural orders that were not resolved at the September 7, 2011 hearing.

¹ The motion to consolidate was supported by Ohio Energy Group, Constellation New Energy, Inc., Constellation New Energy Commodities Group, EnterNOC, Ohio Manufacturers Energy Group, Ohio Hospital Association, Kroger Co., the Cities of Hilliard and Grove City, Association of Independent Colleges and Universities, the Retail Energy Supply Association, and Exelon Generation Co.

² Joint Motion to Consolidate (Sept. 7, 2011) ("Joint Motion").

II. JOINT MOTION TO CONSOLIDATE

The General Assembly has not provided specific guidance regarding the use of consolidation in Commission proceedings, and the Commission has no procedural rule regarding consolidation. The Commission, however, has followed the standard set out in Civil Rule 42 of ordering consolidation when common issues of law or fact are presented by multiple applications.³ The circumstances presented by the Partial Stipulation appear to satisfy the requirements for a consolidated hearing.

As noted in the Joint Motion and IEU-Ohio's February 18, 2011 Motion to Consolidate, it is clear that the various cases noted in both motions present common issues of fact or law, thus warranting consolidation. As the Joint Motion correctly states, consolidation would assist in assuring "a review ... that measures the benefits and costs in toto."⁴ Further, administrative efficiency would be advanced if the Commission were to consolidate matters so as to avoid the Companies' approach of filing multiple applications to address related matters.⁵

III. CASE NO. 10-2929-EL-UNC PROCEDURAL SCHEDULE

During the hearing setting the procedural schedule for the Partial Stipulation, parties discussed the effect of the settlement proposal on the procedural schedule in *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

³ See Joint Motion at 5. Ohio Civil Rule 42(A)(1) provides:

When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

⁴ Joint Motion at 6.

⁵ See Reply Memorandum in Support at 5 (Mar. 14, 2011).

Charge Case”). As provided in the Partial Stipulation, the signatory parties have set out terms that would permit two tiers of capacity charges during the term of the ESP, and the Joint Motion seeks to consolidate the Capacity Charge Case with the ESP as part of the review of the Partial Stipulation. The Capacity Charge Case, however, is currently the subject of procedural order that would require intervenors to file testimony on September 23, 2011 with hearing to commence on October 4, 2011 and that order has not been stayed.⁶ In contrast, the procedural schedule for the Partial Stipulation calls for supporting testimony to be filed on September 14, 2011 and opposing testimony to be filed on September 27, 2011 with hearing to commence also on October 4, 2011.

While the requirements for filing testimony for the two pending hearings are not mutually inconsistent, it would appear unnecessary for intervenors to file testimony in the Capacity Charge Case on issues that the Companies represent are to be addressed in the Partial Stipulation. Because the procedural question was not resolved at the end of the September 7, 2011 hearing, the parties need some clarification of the effect of the Partial Stipulation on the schedule for the Capacity Charge Case. The Commission should suspend the order requiring the filing of intervenor testimony in the Capacity Charge Case until a decision on the Partial Stipulation is made.

IV. CONCLUSION

IEU-Ohio agrees that the motion to consolidate should be granted for the purpose of addressing the Partial Stipulation. Separately, the Commission should clarify the procedural status of the Capacity Charge Case by issuing an order staying the requirement for intervenors to file testimony on September 23, 2011. The additional

⁶ Capacity Charge Case, Entry at 2 (Aug. 11, 2011).

filing requirement currently set for September 23, 2011 is an unnecessary burden at this time.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum of Industrial Energy Users-Ohio in Response to Joint Motion to Consolidate* was served upon the following parties of record this 14th day of September 2011, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.


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