

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company and Columbus Southern) Case No. 10-2376-EL-UNC
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 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.)

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 Commission Review of)
the Capacity Charges of Ohio Power) Case No. 10-344-EL-ATA
Company and Columbus Southern Power)
Company.)

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

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

ENTRY

The Attorney Examiner finds:

- (1) On January 27, 2011, in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM and 11-350-EL-AAM, 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 (ESP 2).
- (2) Pursuant to entry issued August 30, 2011, the hearing in the ESP 2 cases reconvened on September 7, 2011. Prior to the commencement of the hearing, AEP-Ohio and certain parties to the ESP 2 proceedings, filed a Stipulation and Recommendation (Stipulation) for the purpose of resolving all the issues raised in the ESP 2 cases and several other AEP-Ohio cases pending before the Commission, Case No. 10-2376-EL-UNC, *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals (Merger Case)*; Case No. 10-343-EL-ATA, *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders* and Case No. 10-344-EL-ATA, *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders* (jointly Curtailment Cases); Case No. 10-2929-EL-UNC, *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company* (Capacity Charges Case); and Case No. 11-4920-EL-RDR, *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, and Case No. 11-4921-EL-RDR, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code* (jointly Deferred Fuel Cost Cases).
- (3) The parties to the Stipulation are: AEP-Ohio, Staff, Ohio Energy Group (OEG), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (jointly Constellation), Ohio Hospital Association (OHA), Ohio Manufacturers' Association Energy Group (OMA-EG), The Kroger Company (Kroger), City of Hilliard, Ohio (Hilliard), City of Grove City, Ohio (Grove

City), Association of Independent Colleges and Universities of Ohio (AICUO), Exelon Generation Company, LLC (Exelon), Duke Energy Retail Sales, LLC (Duke Retail), AEP Retail Energy Partners LLC (AEP Retail), Wal-Mart Stores East, LP and Sam's East, Inc., (Wal-Mart), Retail Energy Supply Association (RESA), Paulding Wind Farm II LLC (Paulding), Ohio Environmental Council (OEC), Environmental Law and Policy Center (ELPC), Enernoc, Inc. (Enernoc), Natural Resources Defense Council (NRDC), and PJM Power Providers Group (P3) (jointly Signatory Parties).¹

- (4) In light of the Stipulation and based upon discussion with the parties at the ESP 2 hearing, a new procedural schedule was adopted. The procedural schedule on the Stipulation is as follows:

Testimony in support of the Stipulation Sept. 13, 2011

Testimony in opposition to the Stipulation Sept. 27, 2011

Hearing reconvenes Oct. 4, 2011

The hearing on the Stipulation shall reconvene at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room A, Columbus, Ohio.

- (5) On September 8, 2011, as amended on September 9, 2011, AEP-Ohio, AICUO, Grove City, Hilliard, Constellation, Exelon, Kroger, OMA-EG, RESA, Enernoc, and Staff (jointly Movants) filed a joint motion to consolidate ESP 2 with the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Deferred Fuel Cost Cases for purpose of the hearing to consider the Stipulation. The Movants argue that the Stipulation includes a provision to change the manner in which AEP-Ohio customers incur capacity and energy charges as part of default standard service offer to implement an auction procurement process, like that implemented in Case No. 10-388-EL-SSO, commencing June 1, 2015, with a transition plan for the period January 1, 2012 through May 31, 2015. To such end, the Movants state that the Stipulation addresses issues in the Merger Case, the Capacity Charges Case, the Energy

¹ By letter filed on September 9, 2011, as supplemented on September 15, 2011, P3 expressed its intent to be considered a signatory party to the Stipulation.

Curtailment Cases, and the Deferred Fuel Cost Cases and request that the aforementioned proceedings be consolidated for the purpose of the hearing with the AEP-Ohio ESP 2 hearing scheduled to reconvene on October 4, 2011. The Movants reason that consolidating the cases, for purposes of the hearing to consider the Stipulation, will avoid duplication, achieve process and administrative efficiencies, recognize the inescapable interrelated nature of the cases at issue and prevent the potential for inconsistent decisions or a failure to assess the consequences of an issue in one case in regards to the affect on an interrelated proceeding. According to the Movants, all persons who have requested intervention in the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Deferred Fuel Cost Cases have been served with a copy of the Stipulation and the motion for consolidation.

- (6) FirstEnergy Solutions Corporation (FES) and Industrial Energy Users-Ohio (IEU) each filed a response to the motion to consolidate on September 14, 2011. FES and IEU agree with the Movants that the hearing on the Stipulation in ESP 2 should be consolidated with the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Fuel Deferral Cases for purpose of considering the Stipulation. Although the Movants do not address the procedural schedule in their request to consolidate, FES recommends that the procedural schedules in the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Fuel Deferral Cases be stayed while the Commission considers the Stipulation. IEU specifically request that the procedural schedule in the Capacity Charges Case be clarified to specifically stay the filing of intervenor testimony which is due September 23, 2011.
- (7) The motion to consolidate the hearing in the ESP 2 cases with the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Fuel Deferral Cases, for the purpose of considering the Stipulation, is reasonable and should be granted. It is the most efficient process to consider the inter-related issues addressed in the Stipulation in light of the resources of the parties to each of the proceedings and the Commission. Accordingly, the procedural schedule in the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Fuel Deferral Cases shall be stayed, including the filing of intervenor testimony in the Capacity

Charges Case, until the Commission specifically orders otherwise.

- (8) On August 29, 2011, in ESP 2, FES filed several deposition transcripts in the case docket, including that of Laura J. Thomas. Along with the transcripts, FES filed a motion for protective order of portions of the deposition and an exhibit of AEP-Ohio witness Thomas.
- (9) On September 6, 2011, AEP-Ohio filed a motion for protective order of the Thomas deposition excerpts and the exhibit, as requested in FES' August 29, 2011 motion. AEP-Ohio and FES state that the excerpt includes references to, and an exhibit listing, AEP-Ohio's forecast for fuel expenditures which AEP-Ohio classifies as "restricted access confidential" information pursuant to a protective agreement between FES and AEP-Ohio. AEP-Ohio argues that the information is original research developed by AEP-Ohio that is kept confidential. AEP-Ohio reasons that access to the information would enable third parties to replicate the Companies' forecasted expenditures at little or no cost. AEP-Ohio claims that public release of the Thomas deposition excerpts and the exhibit would significantly reduce, if not eliminate, the value of the information causing harm to AEP-Ohio.
- (10) The Thomas deposition excerpt and related Exhibit 3, for which AEP-Ohio and FES request a protective order, constitutes confidential, competitively sensitive information. Accordingly, the request for a protective order is reasonable and should be granted. Further, pursuant to Rule 4901-1-24(F), Ohio Administrative Code (O.A.C.), the information filed under seal shall be granted protective treatment for 18 months from the date this entry is issued and any request to extend the protective order must be filed at least 45 days before the order expires.
- (11) In the ESP 2 cases the time frames for responding to motions and discovery have been revised. Intervenors to the Merger Case, the Curtailment Cases, the Capacity Charges Case and the Deferred Fuel Cost Cases are hereby put on notice that 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. 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. In addition, the response time for discovery has been 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. Parties who have complied with the Commission's requirement to file electronically, pursuant to the directives in Case No. 06-900-AU-WVR, may file electronically in these matters.

It is, therefore,

ORDERED, That the motion to consolidate the hearing on the Stipulation in the ESP 2 cases with the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Fuel Deferral Cases for purpose of considering the Stipulation, is granted. It is, further,

ORDERED, That the consolidated hearing commence on October 4, 2011, at 10:00 a.m., at the offices of the Commission. It is, further,


ORDERED, That the procedural schedule in the Merger Case, the Capacity Charges Case, the Energy Curtailment Cases, and the Fuel Deferral Cases is stayed until the Commission orders otherwise. It is, further,

ORDERED, That the motions for protective order filed by FES and AEP-Ohio are granted pursuant to finding (10). It is, further,

ORDERED, That all parties to these matters comply with the time frames set forth in finding (11). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Greta See
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/vrm

Entered in the Journal

SEP 16 2011



Betty McCauley
Secretary