

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 ) Case No. 11-348-EL-SSO  
Pursuant to Section 4928.143, Revised )  
Code, in the Form of an Electric Security )  
Plan. )

In the Matter of the Application of ) Case No. 11-349-EL-AAM  
Columbus Southern Power Company and ) Case No. 11-350-EL-AAM  
Ohio Power Company for Approval of )  
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 ) Case No. 11-4921-EL-RDR  
Costs 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) On September 7, 2011, a Stipulation and Recommendation (Stipulation) was filed 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) By attorney examiner entry issued September 16, 2011, the hearing on the Stipulation was scheduled to begin on October 4, 2011. The September 16, 2011, entry also revised the time frames for responding to motions and to discovery. Memoranda contra and replies to memoranda contra are now due five business days and three business days, respectively, following the filing of a motion.

- (4) On September 30, 2011, a joint motion for protective orders was filed by some of the signatory parties to the September 7, 2011, Stipulation.<sup>1</sup> In support of the joint motion, the moving parties assert that, on or about September 27, 2011, counsel for the Commission advised the moving parties that the Commission and its staff had received a public records request for records regarding a range of topics, including the settlement discussions that culminated in the September 7, 2011, Stipulation. Commission counsel further advised, the moving parties assert, that absent a specific request not to disclose them, the Commission may be required to produce matters typically considered confidential and privileged as settlement discussions (i.e., term sheets, stipulation drafts, analyses supporting discussions, etc.). The moving parties specifically request that any draft stipulations, draft term sheets, and related settlement communications in the possession of the Commission staff that convey compromise settlement offers and proposals or counterproposals exchanged by the parties during the prehearing process culminating in the Stipulation (hereafter "settlement communications") be protected from public disclosure through a protective order issued by the Commission.

The moving parties further maintain that state law (namely, Section 4901.16, Revised Code) prohibits disclosure of confidential settlement documents by staff, that confidential draft settlement documents shared in negotiations in Commission proceedings are not public records under Section 149.011(G), Revised Code, and that existing case law does not concern preliminary settlement communications resembling those that the moving parties seek here to protect as confidential. Given the press of time, the moving parties note that they have not had an opportunity to specifically identify each and every settlement communication that they believe staff may possess which should be subject to a protective order. Therefore, the moving parties request that staff provide an index of settlement communications in staff's possession which has been identified as potentially being a public record and allow the moving parties an adequate opportunity to identify any

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<sup>1</sup> The signatory parties to the September 30, 2011, joint motion were AEP-Ohio, Ohio Energy Group, The Ohio Manufacturers Energy Group, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Retail Energy Supply Association, Exelon Generation Company, LLC, Ohio Hospital Association, AEP Retail Earnings Partners LLC, Paulding Wind Farm II LLC, EnerNoc, Inc., Duke Energy Retail Sales, LLC, Environmental Law and Policy Center, Kroger Company, and Association of Independent Colleges and Universities of Ohio (collectively "moving parties").

confidential settlement communications that should not be disclosed.

- (5) Memoranda contra the September 30, 2011, joint motion are due on October 7, 2011. The attorney examiner determines that, in light of the additional opportunity discussed below to review and provide specific supporting arguments, the timeframe for filing memoranda contra the September 30, 2011, joint motion shall be extended.
- (6) The attorney examiner adopts the following procedure to afford all persons interested in the subject matter of the September 30, 2011, joint motion an opportunity to review the documents and provide specific arguments prior to a ruling on the request for protective treatment. All parties and persons with motions to intervene pending will be afforded an opportunity to review *in camera* the documents that are subject to the public records request. In order to view the subject documents, the party or person with a motion to intervene pending should contact counsel for the Commission to make the appropriate arrangements to view the subject documents at the offices of the Commission. Such review must be completed no later than October 14, 2011. Any party or person with a pending motion to intervene may file, by no later than October 19, 2011, a subsequent motion more specifically detailing arguments as to why a certain document or documents should be subject to a protective order. Any party or person with a pending motion to intervene may file a memorandum contra the September 30, 2011, joint motion or any subsequent motion filed on October 19, 2011, by no later than October 24, 2011.

In order assist with the review of the subject documents, each document will be identified so that parties filing memoranda in response to this entry may match any further arguments to specific documents. Parties having similar positions are encouraged to consolidate further filings in response to this entry. Any party who files a motion to intervene gaining access to the documents through the procedure set forth above agrees and acknowledges that they shall not disclose the documents or the material contained within the documents until such time as the Commission rules on the motion for protective treatment.

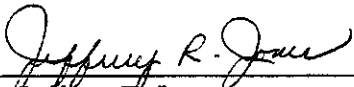
It is, therefore,


ORDERED, That the timeframe for filing memoranda contra the September 30, 2011, joint motion be extended in accordance with finding 5. It is, further,

ORDERED, That the procedure set forth in finding 6 be adopted regarding the September 30, 2011, joint motion for protective order. It is, further,

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

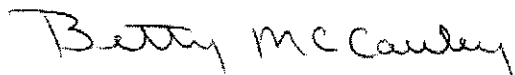
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Jeffrey R. Jones  
Attorney Examiner

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Entered in the Journal

**OCT 07 2011**



Betty McCauley  
Betty McCauley  
Secretary