

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.)

ENTRY

The Commission finds:

- (1) On October 18, 2010, Ohio Power Company (OP) and Columbus Southern Power Company (CSP) (jointly, AEP-Ohio, Applicants or Companies) filed an application with the Commission for approval to merge pursuant to an Agreement and Plan of Merger (Merger Agreement).
- (2) OP and CSP are electric light companies and public utilities as defined in Sections 4905.02 and 4905.03(A), Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (3) Pursuant to entry issued February 9, 2011, interested persons were directed to file comments to the proposed merger by no later than February 25, 2011 and reply comments by March 11, 2011.
- (4) Motions to intervene in this merger case were filed by, and intervention granted to, Industrial Energy Users-Ohio (IEU-Ohio), the Office of Ohio Consumers' Counsel (OCC), The Kroger Company (Kroger), Ohio Energy Group (OEG), Ormet Primary Aluminum Corporation (Ormet), Ohio Manufacturers' Association (OMA), Ohio Hospital Association (OHA), Constellation NewEnergy Inc. (Constellation), Direct Energy Services, LLC and Direct Energy Business, LLC (jointly Direct), FirstEnergy Solutions (FES), Duke Energy Retail Sales, LLC (Duke Retail) and Ohio Cable Telecommunications Association (OCTA).¹

¹ In addition to the interveners listed, Ohio Partners for Affordable Energy (OPAE) filed for intervention in this case. OPAE filed comments on the proposed merger. However, on November 17, 2011, OPAE filed a request to withdraw from this case and several other AEP-Ohio proceedings pending before the

- (5) Subsequently, on January 27, 2011, AEP-Ohio filed an application for a standard service offer pursuant to Section 4928.141, Revised Code, in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM and 11-350-EL-AAM (ESP 2) for approval of an electric security plan in accordance with Section 4928.143, Revised Code.
- (6) On September 7, 2011, AEP-Ohio, the Staff and numerous other interveners to the ESP 2 proceedings filed a Stipulation and Recommendation in the cases and several other associated AEP-Ohio cases, including this merger case, pending before the Commission to resolve all the issues raised in the cases (Consolidated Stipulation). By entry issued September 16, 2011, this merger case was consolidated with the several other AEP-Ohio proceedings, for the purpose of holding a hearing to consider the Consolidated Stipulation. The Consolidated Stipulation included a provision which stated:

The Signatory Parties recommend that the Commission would approve the merger and closing would occur after Commission approval of the Stipulation by the end of 2011, while maintaining separate rate zones for distribution rates until subsequently addressed by the Commission in a separate proceeding. Effective January 2012, CSP and OPC transmission rates will be consolidated and CSP and OP generation rates (including FAC [fuel adjustment clause] rates) will be consolidated.

(Consolidated Stipulation at 24.)

- (7) In support of the Consolidated Stipulation, AEP-Ohio witness Hamrock testified, as provided in the merger application, that the merger of CSP and OP will have no independent effect on the distribution rates charged to CSP and OP customers nor CSP's and OP's existing pre-merger obligation to comply with Ohio law, including the electric service and safety standards. AEP-Ohio offered that while CSP's and OP's transmission and generation rates would be consolidated effective January 2012, the consolidation would not adversely affect any class of either

company's customers. (AEP-Ohio Ex. 8 at 30-31.) On brief, none of the nonsignatory parties to the Consolidated Stipulation raised any substantive challenge to the merger provision of the Consolidated Stipulation as violating any important regulatory principle or practice.

- (8) On December 14, 2011, the Commission issued its Order in the ESP 2 proceeding, adopting, with modifications, the Consolidated Stipulation. The Commission did not modify the merger provision of the Consolidated Stipulation.
- (9) As permitted by Section 4903.10, Revised Code, numerous parties to the ESP 2 cases filed an application for rehearing of the Commission's Order on the Consolidated Stipulation.
- (10) By Entry on Rehearing issued February 23, 2012, after thoroughly considering the issues raised on rehearing, the Commission concluded that even as modified two provisions of the Consolidated Stipulation unrelated to the merger provision, did not benefit ratepayers and the public interest and, therefore, the Commission rejected and disapproved the modified Consolidated Stipulation. The Entry on Rehearing further directed that the ESP 2 cases go forward at the procedural point at which the Consolidated Stipulation was filed. Likewise, the associated AEP-Ohio proceedings which were consolidated with the ESP 2 cases for purposes of considering the Consolidated Stipulation shall also go forward.
- (11) The Commission recognizes that, consistent with the December 14, 2011 Order modifying and approving the Consolidated Stipulation, CSP merged with and into OP effective December 31, 2011.² To the extent that it is necessary for the Commission to reconsider the merger application, in light of our rejection of the modified Consolidated Stipulation, we now examine the Applicants' merger application, comments and reply comments filed and issue this entry.
- (12) On February 28, 2012, Interstate Gas Supply, Inc. (IGS) filed a motion to intervene in this merger case as well as the other cases addressed by the Consolidated Stipulation. IGS states

² See, In this docket, Letter attached to AEP-Ohio tariff filing on December 29, 2011 and its Application for Rehearing of the ESP 2 Order filed January 13, 2012, at 2; FERC Docket No. ER11-2183-001, AEPSC Motion filed February 29, 2012 at 1, footnote 1.

that as a competitive retail electric service (CRES) provider in Ohio it has a real and substantial interest in the consolidated cases and its interest will be affected by the Commission's decision in the proceedings. IGS states that it will be required to compete with the other CRES providers to attract customers and to secure capacity in AEP-Ohio's service territory. IGS notes the February 23, 2012, Entry on Rehearing on the Consolidated Stipulation directed AEP-Ohio to file notice within 30 days indicating whether it intends to modify or withdraw its ESP 2 application. The Entry on Rehearing further directed the attorney examiners to establish a new procedural schedule consistent with AEP-Ohio's notice including "a new intervention deadline to enable interested persons who had not previously participated in this proceeding to intervene." Accordingly, IGS makes this request to intervene.

- (13) Procedurally, the ESP cases were consolidated with several other AEP-Ohio cases pending before the Commission for purposes of considering the Consolidated Stipulation. With the Commission's rejection of the Consolidated Stipulation, each case moves forward from the procedural point just prior to the filing of the Stipulation. As such, the comment period established in the merger case has long since passed and IGS offers nothing in its motion for intervention which suggests a specific interest in the merger application. Accordingly, the Commission concludes that IGS's motion to intervene in this case should be denied. IGS's request for intervention in the proceedings listed in its request, however, shall be considered in separately in each of the cases.
- (14) The merger application offers that the Applicants are corporations under the laws of the state of Ohio and wholly-owned subsidiaries of American Electric Power Company, Inc. Under the proposed Merger Agreement, CSP will merge into OP and OP will be the surviving entity with all outstanding shares of CSP common stock cancelled and replaced with OP common stock. As the surviving entity, the Applicants recognize that OP will succeed to and possess and enjoy all of CSP's rights, privileges, powers, and franchises as well as be subject to all of the restrictions, disabilities, liabilities, and duties of CSP. Further, as the surviving corporation, the Applicants accept that, under Ohio law, OP will assume all the

obligations of CSP without any further Commission action. OP will provide retail electric service to customers within CSP's certified territory under CSP's rates, terms and conditions of service until the Commission approves new rates, terms and conditions for OP after the merger. The Applicants represent that the merger of CSP into OP will not have a detrimental impact on CSP's customers as to cost of service or in the adequacy and reliability of service.

The Applicants state that CSP and OP have been jointly managed and operated for years and that the merger will provide additional efficiencies in the form of reductions in administrative requirements, annual fees paid and regulatory efficiencies. CSP and OP further reason that the merger will reduce barriers to the deployment of new technologies and to research and development projects. CSP and OP assert that the approval of the merger will promote the public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge. To the extent that the Commission determines it has jurisdiction, the Applicants request Commission approval of the merger. The Applicants further state that nothing in Title 49 of the Revised Code, requires any particular procedure for the Commission's review of the merger, and there is no reason for notice and a hearing because the merger will not result in any change in control of CSP, the rates charged or services provided.

- (15) In accordance with the entry issued February 9, 2011, comments were filed by OP&E, Direct Energy, OMA, jointly by the OCC and OEG, IEU-Ohio, FirstSolutions, Kroger, and individually by OEG. Reply comments were filed by AEP-Ohio. The comments and replies are summarized as stated below.

Effect of merger on retail rates, savings or benefits

- (16) Direct argues that the application fails to provide any specific details regarding merger benefits or savings for customers or how the merger would advance compliance with the state energy policy at Section 4928.02, Revised Code. OP&E submits that AEP-Ohio's merger application fails to make an adequate showing that a reasonable rate will result from the proposed merger and requests that the Commission direct the

continuation of the current rates of each company for a specified period of time. (Direct Comments at 1-3; OPAE Comments at 1-3.)

- (17) IEU-Ohio emphasizes that AEP-Ohio's proposal to realign the rates of the merged utility, as reflected in the Companies pending ESP 2 filing, could have a significant effect on customer rates, particularly on residential and industrial customers (IEU-Ohio Comments at 2-3).
- (18) OPAE argues that the application fails to quantify savings, if any, and to include a mechanism to pass any savings to customers. Kroger, OEG and IEU-Ohio request that the Commission identify and ensure that ratepayers benefit from any savings or other benefits as a result of the proposed merger. (OPAE Comments at 3-5; OEG Comments at 1; Kroger Comments at 2; IEU-Ohio Comments at 5.)
- (19) In response to comments regarding ratepayer benefits and savings, AEP-Ohio reiterates in its reply comments that CSP and OP have been jointly managed and operated for several years and, therefore, states that the merger will result in only minimal cost savings. AEP-Ohio estimates labor savings of \$200,000 and non-labor savings of \$212,000.³ Labor savings are based on the elimination of financial planning, financial reporting, corporate finance and regulatory pricing activities currently performed for each company. Non-labor savings are based on the elimination of audit fees, bank fees, outside legal fees, settlement process and customer satisfaction reporting. The Applicants also estimate the one-time merger transaction cost to be approximately \$1.25 million which consist of various administrative task associated with transferring employees, equipment and legal title to the new entity. AEP-Ohio commits to booking merger transaction costs so as not to affect retail rates. (AEP-Ohio Reply at 1-3.)

AEP-Ohio further notes that, as stated in the application, the rates, terms and conditions of service presently in effect for each company will continue until the Commission approves new rates, terms and conditions of service for the merged

³ Non-labor savings include such items as audit fees, bank fees, outside services for legal matters, settlement process and customer satisfaction reporting.

company. Any change in rates, according to AEP-Ohio, will occur in other Commission proceedings, such as the ESP 2 case. AEP-Ohio opposes the request that the Commission delay consideration of the merger until after the conclusion of the Companies' rate cases and ESP 2 cases. AEP-Ohio reasons that the merger case is not a ratemaking proceeding. The issue in this proceeding, according to the Applicants, is whether the merger will result in the provision of adequate service for a reasonable rate, rental, toll or charge. (AEP-Ohio Reply 4-5.)

- (20) As electric light companies and public utilities pursuant to Sections 4905.02 and 4905.03(A), Revised Code, CSP and OP are electric utilities subject to the Commission's jurisdiction and authority to rule on new rates for CSP and OP. Our jurisdiction and authority continues, uninterrupted, to cover the merged entity to be known as OP. Furthermore, the Commission agrees, as acknowledged by IEU-Ohio in its comments, that the merger of CSP into OP will not change the legal relationship between CSP and its customers or CSP's tariff obligations to its customers. Any tariff amendments will be reviewed by separate entry in the ESP 2 case before the Commission. The Companies' ESP 2 case is the proper proceeding to consider and resolve rate matters.

Alternative Energy and Energy Efficiency Requirements

- (21) In the application, AEP-Ohio asserts that the merger will enhance the Companies ability to deploy technology to meet the alternative energy and energy efficiency requirements in Sections 4928.64 and 4928.66, Revised Code. OP&A argues that the merger application fails to place a value on the mergers ability to reduce barriers to deployment, research and development. Ultimately, OP&A encourages the Commission to delay consideration of the merger until after the conclusion of the Companies rate cases. (OP&A Comments 4-5.)
- (22) AEP-Ohio responds that it is difficult to quantify the likely savings associated with the merged entity's compliance with alternative energy and energy efficiency requirements set forth in Sections 4928.64 and 4928.66, Revised Code. Nonetheless, AEP-Ohio asserts that the merger will provide OP with greater flexibility and potentially a better basis to more efficiently meet the requirements of Sections 4928.64 and 4928.66, Revised

Code. AEP-Ohio asserts it will be easier to acquire alternative energy and energy efficiency resources for a single electric utility, as opposed to two separate electric utilities. Further, on a combined basis, AEP-Ohio asserts it can better take advantage of each company's surplus and deficits to the benefit of customers and energy and energy efficiency requirements. (AEP-Ohio Reply Comments at 8-9.)

Retail Competition

- (23) FES submits that this is yet another attempt by AEP-Ohio to discourage retail competition as a result of being faced with an increase in shopping by retail customers. FES advises that the Commission require the Companies to provide additional information on the impact of the merger on short-term and long-term rates, retail competition and switching. FES and Direct request that AEP-Ohio explain any proposed changes or provide some assurance that the merger will not result in significant changes to the communications system used with CRES providers or the availability of consolidated bills. (FES Comments at 1-4; Direct Comments at 3.)
- (24) AEP-Ohio states that while it does not expect any significant changes to the data and communications system used with CRES providers, the Data Universal Numbering System, developed by Dunn & Bradstreet, that assigns a unique numeric identifier to a single business entity, will be changed. In addition, the Applicants state its company name will be changed to reflect the merged company. (AEP-Ohio Reply at 9-10.)
- (25) While acknowledging that most of the issues raised will be addressed in AEP-Ohio's pending ESP 2 cases and the distribution rate cases,⁴ OMA and OCC/OEG recommend that the Commission hold this case open until all interested parties have sufficient information to determine the impact of the proposed merger in other applicable pending proceedings. (OMA Comments at 1-3; OCC/OEG Comments at 1-3.)

⁴ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates, Case No. 11-351-EL-AIR et al. (distribution rate cases).*

- (26) OCC/OEG request that if the Commission will not defer ruling on the merger application, that a procedural schedule be established for discovery, testimony and a hearing to evaluate any customer benefits of the merger and review issues including cost allocation for economic development contracts, fuel costs and reliability. In its individual comments, OEG requests that there be some assurance that ratepayers benefit from any savings associated with the merger of CSP into OP. OEG believes that it is necessary that this issue be addressed in this merger case. (OCC/OEG Comments at 3; OEG Comments at 1).
- (27) AEP-Ohio reiterates no rate changes are proposed for either CSP or OP as part of the merger application and assert that approval of the merger will not impact rates (AEP-Ohio Reply Comments at 5).
- (28) The Commission directs that the Companies' savings, costs and benefits of the merger be reviewed as part of an audit to be conducted by Staff or an independent auditor. The merger audit shall be paid for by AEP-Ohio or the combined entity and managed by the Staff. At a minimum the audit shall review merger costs, the effects of reducing barriers to the deployment of new technologies and to research and development projects and any savings associated with the merger.

2011 Significantly Excessive Earnings Test (SEET)

- (29) Using the SEET and fuel adjustment clause (FAC) proceedings as examples, IEU-Ohio advocates that the Commission assure that current and future company-specific proceedings are not affected by the merger (IEU-Ohio Comments at 3-5).
- (30) AEP-Ohio asserts that IEU-Ohio's claims concerning the affect of the merger are unfounded for 2011. Once the merger is complete, the information that is included in the Federal Energy Regulatory Commission (FERC) Form 1 will be presented on a combined company basis. According to the Applicants, adequate information will be available for the Commission to implement remedies regarding the 2011 SEET review. (AEP-Ohio Reply Comments at 7-8.)
- (31) The Commission notes that, CSP and OP have each accrued earnings for the purposes of the SEET analysis for the year 2011

as individual entities. Therefore, the Commission finds IEU-Ohio's comments regarding the 2011 earnings of CSP and OP for purposes of SEET review and deferred fuel costs for 2011, is moot. To be clear, the SEET review of CSP and OP shall be evaluated separately for 2011 earnings. If appropriate, the Commission will determine the distribution of any remedy to customers based on the circumstances at that time.

Delay the Consideration of the Merger

- (32) OCC/OEG and OPAGE request that the Commission defer ruling on the Companies' request for authority to merge until interested stakeholders have had an opportunity to explore the issues in the Companies pending ESP 2 proceedings and distribution rate cases.⁵ Once the ESP has been vetted, OCC and OEG claim it will be easier to determine the rate impact of the merger. OPAGE encourages the Commission to delay consideration of the merger until after the conclusion of the Companies rate cases. (OPAGE Comments 4-5; OCC/OEG Comments at 2-3.)
- (33) Kroger proposes that the Commission assert jurisdiction pursuant to Sections 4905.04 through 4905.06, Revised Code, and require AEP-Ohio to make an appropriate showing, with specific proof that the merger will promote the public convenience and result in the provision of adequate service at reasonable rates, rentals, toll or charge (Kroger Comments at 1).
- (34) AEP-Ohio argues that the merger application will not affect the Companies' rates and furthermore reasons that the Commission is vested with the discretion to address rate issues in the Companies' ESP and distribution rate case proceedings pending before the Commission. The ESP and distribution rate cases provide an adequate forum to address any rate-related issues. In addition, AEP-Ohio offers that like other merger applications where the Commission has received comments on the application, the Commission has sufficient information to make a decision in this application without further delay or additional process. (AEP-Ohio Reply Comments at 5-7.)

⁵ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates, Case No. 11-351-EL-AIR et al.*

- (35) On July 12, 2011, AEP-Ohio filed notice with the Commission that the Federal Energy Regulatory Commission (FERC) had authorized the merger of CSP into OP. FERC issued its order approving the Companies' request for merger on July 1, 2011.
- (36) As described in the application, the proposed merger will not result in a change in the control of CSP and, thus, the merger application is not subject to review under the Commission's authority set forth in Section 4905.402(B), Revised Code. However, in accordance with the Commission's general supervisory authority under Section 4905.06, Revised Code, we must determine that the merger will promote the public interest and not adversely affect any class of CSP or OP customer within our jurisdiction.
- (37) After considering the comments and reply comments, as well as the lack of any substantive arguments made in opposition to the merger in the hearing on the Consolidated Stipulation, the Commission finds that none of the issues raised support the need for a hearing on the proposed merger. We further find the proposed merger to be in the public interest and to the benefit of the ratepayers of CSP and OP. We note that as part of this proceeding the rates of CSP and OP will not be adjusted. Any proposed rate adjustments will be considered in AEP-Ohio ESP 2 and distribution rate cases currently pending before the Commission or subsequent proceedings. The Commission expects the merger not to adversely affect the electric utility's service and reliability. Accordingly, the Commission concludes, pursuant to our general supervisory authority, that the merger will not adversely affect any customer class of CSP or OP within the Commission's jurisdiction, and will promote the public interest. Therefore, we find the proposed merger should be granted. In light of AEP-Ohio's execution of the Merger Agreement, consistent with the December 14, 2011 Order on the Consolidated Stipulation, and our finding in this case that the proposed merger should be granted, we also find that the merger should be approved to be effective at the end of 2011.

It is, therefore,

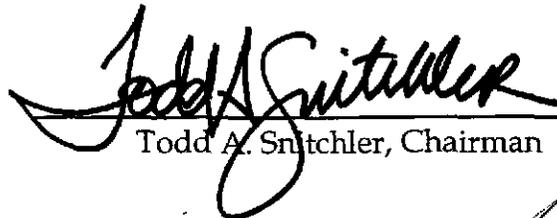
ORDERED, That IGS's motion to intervene in this case is denied. It is, further,

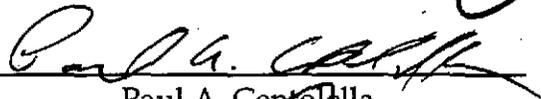
ORDERED, That the proposed merger of CSP with and into OP in accordance with the Merger Agreement be approved to be effective as of December 31, 2011. It is, further,

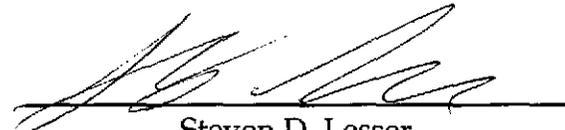
ORDERED, That an audit of the merger costs, savings benefits and the effects of reducing barriers to the deployment of new technologies and to research and development projects be conducted by Staff or an independent auditor, at the Applicant's expense, to be managed by the Staff. It is, further,

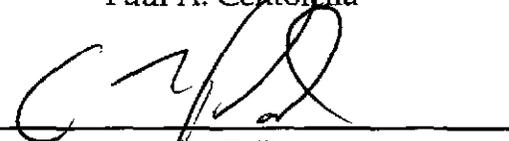
ORDERED, That a copy of this entry be served upon all persons of record in this case.

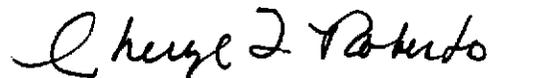
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


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Secretary