**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility. | ) ) ) ) ) ) | Case No. 05-376-EL-UNC |

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## MOTION FOR LEAVE TO INTERVENE OUT OF TIME OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

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Pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, the Ohio Manufacturers' Association Energy Group (OMAEG) hereby respectfully moves the Public Utilities Commission of Ohio (Commission) for leave to intervene out of time in the above-captioned matter with the full powers and rights granted to intervening parties.

As further demonstrated in the attached Memorandum in Support, OMAEG and its members have a real and substantial interest in this proceeding which may be adversely affected by its outcome, and which cannot be adequately represented by any existing parties. Additionally, at the time of the occurrence of most of the operative facts in this proceeding and for a significant amount of time thereafter, OMAEG was not in existence, and thus did not seek intervention. OMAEG satisfies the standard for intervention set forth in the Commission's rules and by statute, and respectfully requests that the Commission grant its Motion for Leave to Intervene Out of Time.

WHEREFORE, OMAEG respectfully requests that the Commission grant its motion, and that OMAEG be made a full party of record in this proceeding.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

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The procedural history of the above-captioned case is long and quite complicated. Of particular pertinence to this phase of the proceeding are the following: on April 10, 2006, the Commission issued an Opinion and Order in this matter which approved the application of Columbus Southern Power Company and Ohio Power Company (collectively, AEP Ohio) to establish a mechanism by which it could recover Phase I costs related to the design and construction of the Great Bend IGCC electric generation facility, which AEP intended to use its provider of last resort (POLR) obligation. In its entry on rehearing, issued on June 28, 2006, the Commission clarified the conditions of its approval of the application, indicating that (1) all Phase I costs would be subject to subsequent audits to determine whether such expenditures were reasonable and prudently incurred to construct the proposed IGCC facility; and (2) if AEP had not commenced a continuous course of construction of the proposed facility within five years after the entry on rehearing, all Phase I charges collected for expenditures associated with items that may be utilized in projects at other sites must be refunded to Ohio ratepayers with interest.

Industrial Energy Users-Ohio (IEU-Ohio), FirstEnergy Solutions (FES), the Office of the Ohio Consumers' Counsel (OCC), and Ohio Energy Group (OEG) appealed the Commission's

order to the Supreme Court of Ohio. On March 13, 2008, the Court affirmed the Commission's decision in part, but further determined that the record did not support the Commission's regulation of a generation facility for distribution-ancillary services in support of AEP Ohio's POLR obligation, and remanded the case to the Commission for further development of the record.[1] The Court also declined to rule upon the request to refund costs already collected from AEP Ohio's customers, indicating that the matter was being remanded for further development of the record, and that the Commission's entry on rehearing included a conditional refund provision which remained effective.[2]

On June 28, 2011, OCC, Ohio Partners for Affordable Energy, IEU-Ohio, and OEG filed a joint motion on remand, requesting that the Commission direct AEP Ohio to refund to customers, with interest, revenues it had previously collected for the design, construction, and operation of the Great Bend IGCC electric generation facility. On June 29, 2011, AEP Ohio filed a reply statement regarding the status of the facility.

Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code (O.A.C.), establish the standard for intervention in the above-captioned proceeding. Section 4903.221, Revised Code, provides, in pertinent part, that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. Section 4903.221(B), Revised Code, further requires the Commission to consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved.

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[1] See *Industrial Energy Users-Ohio v. Public Utilities Commission* (2008) 117 Ohio St.3d 486, 2008-Ohio-990.
[2] Id.

Rule 4901-1-11, O.A.C., permits intervention to a party who has a real and substantial interest in the proceeding, who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest, and whose interest is not adequately represented by an existing party.

The OMAEG is a non-profit entity created by the Ohio Manufacturers' Association (OMA) for the purpose of educating and providing information to energy consumers, regulatory boards, and suppliers of energy; advancing energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and advocating on behalf of OMA in critical cases before the Commission. OMAEG members are all members of the OMA. Numerous OMAEG members are also customers who purchased electric service from Columbus Southern Power or Ohio Power Company (AEP Ohio) during the years under consideration in this phase of the above-captioned proceeding and will be affected by the Commission's determination in this matter. Since its inception, OMAEG has been regularly and actively involved in Commission proceedings and, as in previous proceedings, its unique knowledge and perspective will contribute to the full development and equitable resolution of the issues the Commission is considering in this phase of the proceeding.

Despite OMAEG's recent involvement in Commission proceedings, for much of the time that this proceeding has been ongoing, OMAEG did not exist. OMAEG was not formed until 2011 and, for this reason, was not able to be involved in this matter in its early phases. At this phase of the proceeding, however, it is important for OMAEG to be able to participate, as its members paid Phase I costs and charges, and their position will assist the Commission in its review of the issues on remand in this case.

Because of its previous lack of involvement in this matter, OMAEG was not aware that the case was active again and presented important issues for the Commission's consideration until only very recently. OMAEG realizes that the attorney examiner set an August 18, 2014 deadline for intervention on the issues on remand in this case; however, Rule 4901-1-11(F), O.A.C., permits the Commission to grant a motion to intervene out of time in extraordinary circumstances. OMAEG respectfully submits that the unusual procedural history of this matter, the 7-day notice to intervene provided in the entry, and OMAEG's lack of existence during a significant portion of the previous phases of the proceeding, qualify as extraordinary circumstances under which the Commission may grant its motion to intervene out of time.

Given these circumstances, OMA has a direct, real, and substantial interest in the issues implicated in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect those interests. Moreover, OMAEG's interests will not be adequately represented by other parties to the proceeding. Finally, this timely intervention will not unduly delay or prolong the proceeding.

OMAEG satisfies the criteria set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C., and is, therefore, authorized to intervene with the full powers and rights granted by the Commission to intervening parties.

WHEREFORE, OMAEG respectfully requests that the Commission grant its motion for leave to intervene out of time and designate OMAEG a full party of record in the above-captioned case.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on September 2, 2014.

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Summary: Motion to Intervene Out of Time and Memorandum in Support electronically filed by Ms. Rebecca L Hussey on behalf of OMAEG