

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of : Case No. 2010-0722  
Columbus Southern Power Company :  
and Ohio Power Company to Adjust : Appeal from the Public Utilities  
Their Economic Development Cost : Commission of Ohio Case No. 09-  
Recovery Rider Rates : 1095-EL-RDR  
:  
In the Matter of the Application of : Case No. 2010-1073  
Columbus Southern Power Company : Appeal from the Public Utilities  
and Ohio Power Company to Adjust : Commission of Ohio  
their Economic Development Cost :  
Recovery Rider Pursuant to rule 4901:1- : Public Utilities Commission of  
38-08(A)(5), Ohio Administrative Code. : Ohio Case No. 10-154-EL-RDR.

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MEMORANDUM IN OPPOSITION TO MOTION TO CONSOLIDATE

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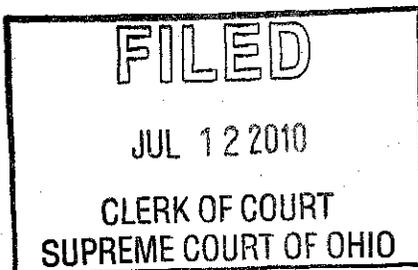
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**IN THE SUPREME COURT OF OHIO**

In the Matter of the Application of : Columbus Southern Power Company : and Ohio Power Company to Adjust : Their Economic Development Cost : Recovery Rider Rates :	Case No. 2010-0722  Appeal from the Public Utilities Commission of Ohio Case No. 09- 1095-EL-RDR
In the Matter of the Application of : Columbus Southern Power Company : and Ohio Power Company to Adjust : their Economic Development Cost : Recovery Rider Pursuant to rule 4901:1- : 38-08(A)(5), Ohio Administrative Code. :	Case No. 2010-1073  Appeal from the Public Utilities Commission of Ohio  Public Utilities Commission of Ohio Case No. 10-154-EL-RDR.

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**MEMORANDUM IN OPPOSITION TO MOTION TO CONSOLIDATE**

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On July 1, 2010, Industrial Energy Users-Ohio (IEU) filed a motion to consolidate Case Nos. 2010-0722 and 2010-1073. Columbus Southern Power Company is the Appellant in Case No. 2010-0722 and raises a total of twelve separate issues. IEU has filed a cross-appeal in the same docket. IEU is the Appellant in Case No. 2010-1073. The Public Utilities Commission of Ohio (Commission), the Appellee in both cases, hereby responds to IEU's motion. IEU seeks consolidation for purposes of briefing, oral argument, and decision.

IEU's motion to consolidate should be denied because consolidation of these cases would create confusion as to the proper briefing schedule. IEU seeks to consolidate Case No. 2010-0722, in which it has filed an amended notice of *cross-appeal*, with Case No.

2010-1073, in which it has filed a notice of *appeal*. Consolidation of these cases would lead to inconsistent briefing schedules.

The Court's Rules of Practice provide a special briefing schedule for cases involving cross-appeals. S. Ct. Prac. R. 6.5. In cases involving cross-appeals, there are a total of four briefs, with two being filed by each party. *Id.* These cases are thus different from ordinary appeals, in which the appellant and appellee each file a merit brief and only the appellant may file a reply brief.

Granting the motion to consolidate would lead to confusion regarding the briefing schedule. Additionally, consolidation for purposes of oral argument and decision is premature at this point. Therefore, the Court should deny the motion. Alternatively, should the Court decide that consolidation is appropriate, the Court should establish a briefing schedule in its order so as to avoid uncertainty.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum in Opposition to Motion to Consolidate** was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 12<sup>th</sup> day of July, 2010.

  
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