

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of	:	Case No. 2013-0521
Columbus Southern Power Company and	:	
Ohio Power Company for Authority to	:	Appeal from the Public Utilities
Establish a Standard Service Offer	:	Commission of Ohio
Pursuant to §4928.143, Ohio Rev. Code,	:	
in the Form of an Electric Security Plan.	:	Public Utilities Commission of Ohio
	:	Case No. 11-346-EL-SSO
	:	Case No. 11-348-EL-SSO
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.	:	
	:	
The Kroger Company,	:	
	:	
And	:	
	:	
Industrial Energy Users-Ohio,	:	
	:	
Appellants,	:	
	:	
v.	:	
	:	
Public Utilities Commission of Ohio,	:	
	:	
Appellee.	:	

**JOINT MOTION FOR AN ORDER INCREASING THE TIME FOR ORAL
ARGUMENT OF APPELLANTS**

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Public Utilities Commission of Ohio,	:	
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**JOINT MOTION FOR AN ORDER INCREASING THE TIME FOR ORAL
ARGUMENT OF APPELLANTS**

Pursuant to Rule 4.01(A)(1) of the Supreme Court Rules of Practice, The Kroger Co., Industrial Energy Users-Ohio (“IEU-Ohio”), Ohio Energy Group (“OEG”), and the Office of the Ohio Consumers’ Counsel (“OCC”) (collectively “Joint Movants”) request the Court to amend its Order of April 9, 2015 to increase each appellant’s permitted time for oral argument to ten minutes. This motion should be granted because the Joint Movants should be permitted the

opportunity to argue their respective and unique propositions of law separately. Moreover, additional time is warranted because the issues are complex and are of great public importance to Ohioans.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

The Court has scheduled the case for oral argument on May 19, 2015. On April 9, 2015, the Court issued an order allotting time for oral argument. In that order, the Court provided that the Joint Movants have ten minutes of oral argument time collectively.¹ Because of the complexity of the issues and their financial significance to customers, the Joint Movants request

¹ IEU-Ohio also was afforded some time to address the cross-appeal of Ohio Power Company, (“AEP-Ohio”) but the time afforded is split with the Public Utilities Commission of Ohio (“Commission”).

that the Court amend its order and afford each Joint Movants ten minutes individually to present its arguments to the Court.

In the pending case, the Order of the Commission that the Court is reviewing permits AEP-Ohio² to increase the amount it collects from customers through a nonbypassable “stability charge” and approves a rate plan known as an electric security plan (“ESP”).³ These authorizations raise several issues including the scope of the Commission’s jurisdiction to address AEP-Ohio’s compensation for wholesale generation services, the application and interpretation of several provisions of Chapter 4928 of the Revised Code, the General Assembly’s effort to limit the recovery of transition revenue or its equivalent, the Commission’s authority to cross-subsidize generation services, and the Commission’s authority to move beyond the regulatory structure contained in Title 49 of the Revised Code to direct policy outcomes.

The need to expand the oral argument time is particularly important in this case since the Joint Movants do not advance similar challenges to the Commission’s Order. The Kroger Co., for example, appeals only the rate design of the Retail Stability Rider (“RSR”), alleged “stability charge.” OEG challenges the collection of a capacity charge through the RSR, urging that the cost responsibility for a portion of the charge should be assigned to competitive retail electric service (“CRES”) providers since they are the ones that are using AEP-Ohio’s capacity service. IEU-Ohio and OCC present more far ranging challenges to the Commission’s Order. For example, the OCC challenges the RSR as a double charge. IEU-Ohio seeks review of the RSR

² When the first application was filed in this case, the Columbus Southern Power Company and Ohio Power Company were separately certified electric distribution utilities (“EDUs”). On December 30, 2011, the EDUs merged and Ohio Power Company (AEP-Ohio) was the surviving entity.

³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order (Aug. 8, 2012) (“AEP-Ohio ESP II Order”).

and other provisions of AEP-Ohio's ESP II Order. Thus, the scope of the issues raised by each Joint Movant is distinct, and the range of issues is broad and complex.

Not only are the issues raised by the Joint Movants distinct, far ranging, and complex, they are also of significant importance to customers. One critical issue in this case is the Commission's authorization of a nonbypassable RSR charge of \$4/MW-hour. The RSR permits AEP-Ohio to bill and collect an estimated \$508 million from retail customers over the term of the ESP. Additionally, the Commission authorized the deferral and recovery of wholesale costs that are now estimated to total \$445 million by June 2015.

The Joint Movants recognize that the resources of the Court are limited. Because the issues presented in these appeals are numerous, diverse, and complex, however, ten minutes of argument shared among the four appellants practically means that no party will have sufficient time to present its argument and sufficiently respond to the Court's inquiries. Under similar circumstances as those presented by this case, the Court has issued order for the orderly presentation of arguments to the Court. *Payphone Assoc. of Ohio v. Pub. Util. Comm.*, 2005-Ohio-4803, 834 N.E.2d 355; *In re Estate of Mason*, 107 Ohio St.3d 1704, 2006-Ohio-13. To assure a proper presentation of the issues to the Court in this case, the Joint Movants respectfully request that the Court follow its prior practice and grant their motion to increase the time for oral argument to ten minutes for each Joint Movant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Motion for an Order Increasing Time for Oral Argument of Appellants* was served upon the parties of record this 15th day of April 2015, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

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