

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.	:	

**MEMORANDUM OF INDUSTRIAL ENERGY USERS-OHIO IN OPPOSITION TO
THE MOTION FOR AN ORDER MODIFYING THE TIME FOR ORAL ARGUMENT
SUBMITTED BY THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**MEMORANDUM OF INDUSTRIAL ENERGY USERS-OHIO IN OPPOSITION TO
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The Court issued an order, *sua sponte*, on April 9, 2015 (“April 9 Order”) that allocates thirty minutes for oral argument in three ten minute blocks. Industrial Energy Users-Ohio (“IEU-Ohio”) shares the first ten minute block with three other appellants. The Ohio Power Company (“AEP-Ohio”) was allocated the second ten minute block. The Public Utilities Commission of Ohio (“Commission”) and IEU-Ohio share the final ten minute block.

The Commission has moved for an order modifying the third block so that it would not share time with IEU-Ohio.¹ The Commission argues that it should not be required to share time with IEU-Ohio because IEU-Ohio “is broadly attacking the Commission's decision below.”² The Commission also claims “[g]iving an appellant an opportunity to argue during the appellee’s only opportunity to defend its decision denies appellee the same opportunity to present its case as the appellants have.”³ Further, the Commission argues that the Court’s April 9 Order provides appellants an opportunity for rebuttal without the need to reserve any of its initial time.⁴ These arguments do not warrant an additional restriction on IEU-Ohio’s opportunity to present its arguments to the Court. Therefore, the motion should be denied.

This case arises out of the appeals of The Kroger Co. (“Kroger”), the Office of the Ohio Consumers’ Counsel (“OCC”), the Ohio Energy Group (“OEG”), and IEU-Ohio (collectively “Consumer Appellants”) and the cross-appeal of AEP-Ohio of the Commission’s Order issued on August 8, 2012, modifying and approving an electric security plan (“ESP II Order”). In the ESP II Order, the Commission authorized a default electric standard service offer that is at least \$386 million in aggregate less favorable than the market-based alternative and several riders that increase customer charges by at least \$508 million. In their appeals of the ESP II Order, each of the Consumer Appellants presents the Court with unique grounds for reversing these illegal and unreasonable actions of the Commission.⁵ Although the Consumer Appellants seek reversal of

¹ Motion for an Order Modifying the Time for Oral Argument Submitted on Behalf of Appellee, the Public Utilities Commission of Ohio (Apr. 20, 2015) (“Motion to Restrict Argument”).

² *Id.* at 4.

³ *Id.*

⁴ *Id.*

⁵ Joint Motion for an Order Increasing the Time for Oral Argument of Appellants (Apr. 15, 2015) *passim* (“Joint Motion”).

most of the Commission's ESP II Order, IEU-Ohio joins with the Commission and argues that the Court should reject the assignments of error raised in AEP-Ohio's cross-appeal.⁶

In response to the April 9 Order directing that the Commission share its time with IEU-Ohio at the oral argument scheduled on May 19, 2015, the Commission initially complains that it should not be required to share time with IEU-Ohio because IEU-Ohio has appealed several parts of the ESP II Order. As noted above, however, IEU-Ohio and the Commission jointly argue that the Court should reject AEP-Ohio's assignments of error. Thus, the Court's decision to require the Commission to share time with IEU-Ohio is consistent with their positions regarding AEP-Ohio's cross-appeal.⁷

The Commission also argues that the Court should restrict IEU-Ohio's opportunity to present its appeal because the Commission should have the same opportunity as the Consumer Appellants have to argue their positions.⁸ As provided by the April 9 Order, however, the Consumer Appellants collectively have ten minutes to present their arguments.⁹ Because the claims of each of the Consumer Appellants are different, the Commission actually is being afforded a much broader opportunity to present its arguments than that provided to the Consumer Appellants that are required to share the first ten minute block.

⁶ IEU-Ohio and FirstEnergy Solutions Corp. ("FES") filed briefs urging the Court to affirm the Commission on the issues raised in the cross-appeal of AEP-Ohio. Since filing its briefs, however, FES has dismissed its appeal.

⁷ As noted below, however, IEU-Ohio may seek to advance any of the positions presented in its briefs during the shared time.

⁸ Motion to Restrict Argument at 4.

⁹ On April 15, 2015, the Consumer Appellants moved for an order expanding the time available to them for oral argument so that each would be afforded ten minutes. Joint Motion. The Commission and AEP-Ohio have opposed the Joint Motion. Appellee/Cross-Appellant Ohio Power Company's and Appellee Public Utilities Commission of Ohio's Joint Memorandum in Opposition to Joint Motion for an Order Increasing the Time for Oral Argument of Appellants filed by The Kroger Co., Industrial Energy Users-Ohio, the Ohio Energy Group, and the Office of the Ohio Consumers' Counsel (Apr. 20, 2015).

The Commission's claim that it should be afforded additional time also fails to account for the fact that it and AEP-Ohio jointly defend the provisions of the Commission's ESP II Order.¹⁰ Under the April 9 Order, as noted above, AEP-Ohio is afforded ten minutes to defend the ESP II Order (and argue its own cross-appeal). Thus, the Commission and AEP-Ohio collectively will have ample opportunity to argue that the Commission did not err when it approved the standard service offer that is at least \$386 million worse than the market alternative and authorized nonbypassable generation-related charges.

Finally, the Commission argues that the Court should restrict IEU-Ohio's opportunity to address the Court because the April 9 Order may present IEU-Ohio an opportunity for rebuttal.¹¹ The April 9 Order permitted IEU-Ohio to argue its positions with the Commission, but did not impose restrictions on the arguments that IEU-Ohio may make. The Court should not do so now by granting the Commission's motion or restricting the scope of the arguments IEU-Ohio can advance in the third block.

In summary, the Commission fails to provide the Court a reasoned basis for reversing its decision to require the Commission to share the third ten minute block of oral argument with IEU-Ohio. Therefore, the Commission's motion to revise that part of the Court's April 9 Order should be denied.

Respectfully submitted,

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¹⁰ Motion to Restrict Argument at 4.

¹¹ *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum of Industrial Energy Users-Ohio in Opposition to the Motion for an Order Modifying the Time for Oral Argument Submitted by the Public Utilities Commission of Ohio* was served upon the parties of record this 22nd day of April 2015, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

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