

**FILE**

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the 2009 Annual Filing )	
of Columbus Southern Power Company )	
And Ohio Power Company Required by )	Case No. 10-1261-EL-UNC
Rule 4901:1-35-10, Ohio Administrative )	
Code )	
)	
)	
In the Matter of the Fuel Adjustment )	Case No. 09-872-EL-FAC
Clauses for Columbus Southern Power )	
Company and Ohio Power Company )	Case No. 09-873-EL-FAC
)	

**STIPULATION AND RECOMMENDATION**

**I. Introduction**

Rule 4901-1-30, Ohio Administrative Code (OAC), provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. This document sets forth the understanding and agreement of the parties who have signed below (Signatory Parties) and jointly recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation) without modification, in order to resolve all of the issues raised in these proceedings through the application filed by Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (sometime collectively referred to as "AEP Ohio" or the "Companies", which references may also include the post-merger entity following consummation of the proposed merger between CSP and OPCo).

This Stipulation is a product of lengthy, serious, arm's-length bargaining among the Signatory Parties and other parties who chose not to sign the Stipulation (all of whom are capable, knowledgeable parties), which negotiations were undertaken by the

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Signatory Parties to settle the issues arising from these proceedings. This Stipulation is supported by adequate data and information; as a package, the Stipulation benefits customers and the public interest; and represents a just and reasonable resolution of all issues in these proceedings; violates no regulatory principle or practice; and complies with and promotes the policies and requirements of Chapter 4928, Revised Code. This Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and, though not binding on the Commission, is entitled to careful consideration. For purposes of resolving the issues raised by these proceedings, the Signatory Parties stipulate, agree and recommend as set forth below.

## **II. Signatory Parties**

This Stipulation is entered into by and among the Staff of the Public Utilities Commission of Ohio (Staff)<sup>1</sup>, the Ohio Hospital Association (OHA), the Ohio Manufacturers' Association (OMA), The Kroger Company, Ormet Primary Aluminum Corporation, CSP and OPCo. As further addressed in Paragraph X.5 below, all of the Signatory Parties agree to fully support adoption of the Stipulation without modification in this proceeding.

## **III. Recitals**

WHEREAS, in 2008, the Ohio General Assembly passed Substitute Senate Bill 221 ("SB 221"), which includes new Section 4928.143, Revised Code, establishing the option of providing an Electric Security Plan (ESP) as the standard service offer required by Section 4928.141, Revised Code;

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<sup>1</sup> The Staff is considered a party for purposes of entering into the Stipulation, pursuant to Rule 4901-1-10(C), Ohio Administrative Code.

WHEREAS, Section, 4928.143(F), Revised Code, contains a significantly excessive earnings test applicable to AEP Ohio's approved ESP as adopted in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO (ESP Cases);

WHEREAS, on September 1, 2010, AEP Ohio made a filing to initiate Case No. 10-1261-EL-UNC as required by Rule 4901:1-35-10, Ohio Administrative Code (SEET Case);

WHEREAS, AEP Ohio's 2009 Management and Performance and Financial Audit proceeding under the ESP is pending in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC (FAC Audit Cases);

WHEREAS, the Signatory Parties endeavor to resolve all of the issues pending before the Commission in the FAC Cases and the SEET Case;

WHEREAS, the Stipulation represents the product of serious bargaining among capable, knowledgeable parties;

WHEREAS, the Stipulation as a package benefits consumers and the public interest; and

WHEREAS, the terms and conditions of this Stipulation satisfy the policies of the State of Ohio as set forth in Section 4928.02, Revised Code and do not violate any important regulatory policies or principles.

#### **IV. AEP Ohio Commitment Regarding 2011 Rates**

1. In order to convey value to customers in difficult economic times, CSP agrees that the Commission-authorized 6% rate cap for CSP for 2011 will be reduced to 0% and CSP will utilize the current FAC deferral mechanism approved in Case No. 08-917-EL-SSO to maintain the new rate cap, except that CSP agrees to voluntarily forego recovery of carrying charges that would otherwise apply to the

deferrals created in 2011. Rates subject to the cap will change in accordance with the ESP, however, the FAC rate will be adjusted to maintain the reduced cap for 2011. Rates not subject to the original rate cap remain eligible for increase. Subsequent recovery of all unamortized FAC deferral balance is addressed in Paragraph VI.3.

2. AEP Ohio agrees to prospectively forego \$18 million in carrying charges relating to 2010 environmental investment, as provided in this paragraph. First, CSP agrees to forego its filing authorized under its current Electric Security Plan to increase the Environmental Investment Carrying Cost Rider, that would otherwise be filed in the first quarter of 2011 and relate to 2010 environmental investment. Second, to the extent that the projected revenue requirements that would have been presented in CSP's 2011 Environmental Investment Carrying Cost Rider filing is less than \$18 million, AEP Ohio agrees to reduce the increase that would have otherwise been requested by OPCo in its 2011 Environmental Investment Carrying Cost Rider filing (relating to 2010 environmental investment) by the difference. AEP Ohio's agreement to forego the 2010 Environmental Investment Carrying Cost Rider amounts that would otherwise increase 2011 rates or be deferred for future recovery is without prejudice to AEP Ohio seeking recovery of prospective carrying costs for environmental investments not foregone herein. The Companies' testimony in support of the Stipulation will address the specific dollar amounts referenced in this paragraph, totaling \$18 million.

## **V. Capital Requirements of Ohio Investment Commitments**

1. CSP commits to make a \$20 million equity investment in the Turning Point solar project (Project), described in Companies witness Hamrock's rebuttal testimony filed in the SEET Case. Should the Project not go forward, CSP will undertake a similar commitment for another renewable energy generation project satisfactory to CSP and will make best efforts to create a comparable number of new jobs through an alternative renewable energy project investment – recognizing that the Project is a unique opportunity to attract manufacturing jobs to Ohio.
2. The Signatory Parties acknowledge that the purpose and expected economic impact of the Turning Point project is to support economic development in this State, bringing approximately 300 new construction jobs and at least 300 new manufacturing-related jobs to Ohio.
3. CSP and OPCo represent that the Companies plan to enter into a facility lease agreement with the Developer of the Turning Point Project to operate the facility and effectively own the capacity, energy and environmental attributes associated with the facility.
4. CSP's commitment to equity ownership and operation of a renewable energy generation project, in conjunction with the lease agreement entered into by CSP and OPCo, will entitle AEP Ohio to the energy output of the facility and associated renewable energy credits (RECs).
5. AEP Ohio will apply RECs associated with energy received toward compliance with the Ohio solar benchmark under Section 4928.64, Revised Code.

6. AEP Ohio reserves the right to sell any of the excess RECs associated with the Turning Point project above those needed for compliance with the solar benchmark under Section 4928.64, Revised Code, provided that the proceeds from such sales will be credited against compliance costs for the benefit of ratepayers.
7. CSP agrees to commit \$25 million additional investment in Distribution infrastructure, to be allocated between gridSMART® metering technologies and customer facility infrastructure, as determined by the CSP and the Staff.
8. In conjunction with Staff, CSP agrees to develop a Phase II pilot program for AEP Ohio's gridSMART program beyond the current footprint of Phase I, which will include dynamic pricing options.
9. The Signatory Parties take no position on the future recovery of the incremental capital investments discussed in this Stipulation.
10. The Signatory Parties recommend the Commission find that CSP's equity investment described above involves substantial capital requirements associated with a future committed investment in Ohio, for purposes of Section 4928.143(F), Revised Code, and that CSP's 2009 earnings are not significantly excessive, when considered in light of the capital requirements associated with CSP's commitments for future investments in Ohio.

#### **VI. Pending Fuel Adjustment Clause Cases**

1. Signatory Parties agree to resolve all issues pending in the 2009 FAC Audit Cases that have already been addressed in testimony, examined during an evidentiary hearing, and briefed, in exchange for the sale of the coal reserve discussed

extensively in the record in the FAC Audit Cases (the name and location of which is confidential).

2. The net gain from the sale of the coal reserve, as described in the Companies' testimony supporting the Stipulation, will be distributed as follows:
  - a. The first \$30.0 million of the net gain, if available, will be credited 100% to ratepayers' benefit as set forth below;
  - b. The balance of the blended retail apportionment (65% of the total company amount) of the remaining net proceeds will be shared between ratepayers (75%) and AEP Ohio (25%).

An example of how these provisions for sharing the net gain will operate is provided as Attachment 1 to the Stipulation.

3. The \$30 million ratepayer share, if available, will be first applied to recover the 2011 deferrals created under Paragraph IV.1, then to recover CSP's remaining unamortized deferral balance as of the time of the distribution under Paragraph VI.7, with any remaining deferral balance being recovered through the Commission's approved fuel deferral methodology adopted in Case No. 08-917-EL-SSO. If there are additional proceeds from the \$30 million available after eliminating CSP's deferrals, then the ratepayer share will be applied to reduce the total unamortized FAC deferral balance of the Companies, at the time of the distribution provided for in Paragraph VI.7.
4. Because the sales of the coal reserve and sharing of net proceeds is a non-recurring and special accounting item as contemplated in the Commission's June 30, 2010 Finding and Order in Case Number 09-786-EL-UNC, the Signatory Parties agree that AEP Ohio, regardless of whether it is OPCo, CSP or the combined company, will exclude its share of the net proceeds (gains or losses) from sale of the coal reserve asset from earnings for purposes of the SEET.

5. The Companies agree to hire an independent consultant/ sales broker selected by Staff that will oversee and conduct the coal reserve asset sale. Based on this competitive approach, the process or outcome of the sale may not be challenged in any subsequent proceeding.
6. The sale of the coal reserve asset will be undertaken over the several months following adoption of the Stipulation, through an orderly, competitive process. The Companies will make best efforts to sell the coal reserve asset in 2011 for cash.
7. While timing of the sale is to be completed and the present book value will be offset under Paragraph VI.2. in an efficient and orderly manner, the ratepayer proceeds will not be applied as described in Paragraphs VI.2.a and b. for the benefit of all AEP Ohio customers who are currently served by CSP and OPCo until after consummation and closing of the merger between CSP and OPCo requested in the Companies' application in Case No. 10-2376-EL-UNC (*i.e.*, after all regulatory approvals are obtained, including both the PUCO and FERC). The ratepayer share of the proceeds will be maintained as a regulatory liability prior to distribution. If the merger is not approved or consummated by the end of 2012, the Commission will determine an equitable method for distribution of any ratepayer share of the net sales proceeds at that time.

## **VII. Proposed Merger of CSP and OPCo**

1. The Signatory Parties agree to support Commission approval of CSP and OPCo application to merge as requested in the Companies' application in Case No. 10-2376-EL-UNC.



2. AEP Ohio agrees that there will be no net job losses at the Companies as a result of involuntary attrition due to the merger between CSP and OPCo. Jobs are defined as Ohio located jobs with the Companies and AEP Service Corporation employees that report to the President of AEP Ohio. This is understood to mean persons who are the employees in a full and part time capacity and in the current ratios. It does not include non-AEP related employees (*i.e.*, third parties) who are contracted by AEP to perform services. Net job loss is measured from adoption of this Stipulation through December 31, 2014. "As a result of the merger" is defined as the elimination of jobs due to consolidation or relocation of duties/functions due to the merger of CSP and OPCo. AEP will bear the burden of proof to show that any elimination of Ohio-located jobs was not a result of the merger. Involuntary attrition does not include employees who take a voluntary buy-out so long as the position or duties are not moved (re-posted) to another state.
3. In association with this Stipulation and in recognition of the Signatory Parties' commitment to support the merger, the Companies agree to make a regulatory commitment of \$50 million for the purpose of potentially refunding earnings to Ohio retail customers should the merged company earn in excess of 15% return on equity in either of the first two year-end periods following the merger closing. More specifically, after the merger closing, to the extent that the book return on equity of the merged Company exceeds 15% in either of the first two annual financial statements that are filed following the merger closing, the Companies agree to refund to Ohio retail customers the amount of earnings exceeding 15% up to a cumulative total of \$50 million, subject to the first-year deduction procedure as follows. Should

the merged company earn less than 15% in the first year-end period following the merger closing, the shortfall will be deducted from the \$50 million available in the second annual period. This regulatory commitment is intended as an additional consumer protection measure associated with the proposed merger and represents a voluntary agreement by the Companies amounting to a second earnings test, separate and apart from the annual significantly excessive earnings test required by Section 4928.143(F), Revised Code. If the proposed merger is not approved by the PUCO before the end of 2011, this additional earnings test will not apply.

**VIII. Application of Section 4928.143(F), Revised Code, to CSP and OPCo**

1. The Signatory Parties agree and recommend that, based on the terms and conditions of this Stipulation, the Commission find that CSP and OPCo have met their burden of proving that their 2009 earnings were not significantly excessive, for purposes of Section 4928.143(F), Revised Code.
2. The Signatory Parties agree and recommend that the Commission find that OPCo's 2009 earnings are within the "safe harbor" established by the Commission in Case No. 09-786-EL-UNC.
3. The Signatory Parties agree and recommend that the Commission find that Off System Sales (OSS) earnings should be excluded from earnings for purposes of the 2010 and 2011 SEET cases.
4. The Signatory Parties agree and recommend that the Commission find that no adjustments should be made to CSP's or OPCo's reported earnings for regulatory accounting deferrals for purposes of the 2010 and 2011 SEET cases.

## **IX. Miscellaneous Terms and Commitments**

1. CSP agrees to contribute \$1 million of shareholder funds for OMA to be used to assist its members with programs and initiatives designed to bring energy-related benefits to Ohio manufacturers.
2. CSP agrees to contribute \$1 million of shareholder funds for OHA to be used to assist its members with programs and initiatives designed to bring energy-related benefits to hospitals as those institutions continue to serve their communities.
3. In order to promote the accelerated deployment and use of new energy efficiency technologies, CSP agrees to contribute \$100,000 of shareholder funds towards The Kroger Co.'s energy efficiency projects that may not otherwise be eligible for recovery under a reasonable arrangement or pass the total resource cost test as defined in Ohio Administrative Code 4901:1-39-01. There shall be no deadline or time limitation to deploy these projects, and this contribution will not expire, but may be used by The Kroger Co. on acceptable energy efficiency projects until the contribution amount is exhausted. The Kroger Co. shall commit its energy usage reductions resulting from energy efficiency projects funded by AEP's \$100,000 contribution to AEP so that AEP Ohio may meet its energy efficiency requirements under Section 4928.66, Revised Code. AEP Ohio agrees to withdraw its opposition to The Kroger Company's motion for intervention in the SEET Case.
4. As part of its ongoing Partnership With Ohio initiative, CSP agrees to contribute \$1 million of shareholder funds for the benefit of its low-income customers.

## **X. Procedural Matters**

1. The Signatory Parties recognize and acknowledge the common interest in resolving the issues in the above-captioned cases on an expedited basis and jointly recommend that the following procedural schedule be adopted to consider the adoption of this Stipulation: (a) written testimony in support of the Stipulation to be filed by December 1, 2010; (b) written testimony in opposition to the Stipulation to be filed by December 6, 2010; (c) evidentiary hearing regarding the Stipulation to be conducted on December 9, 2010; and (d) one set of briefs in support of or in opposition to the Stipulation to be filed by December 15, 2010.
2. Except for enforcement purposes, neither this Stipulation nor the information and data contained herein or attached hereto shall be cited as a precedent in any future proceeding for or against any Signatory Party, or the Commission itself, if the Commission approves the Stipulation. Nor shall the acceptance of any provision as part of the settlement agreement be cited by any party or the Commission in any forum so as to imply or state that any signatory party agrees with any specific provision of the settlement. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in this Stipulation as the results that any Signatory Party might support or seek, but for this Stipulation in these proceedings or in any other proceeding. This Stipulation contains a combination of outcomes that reflects an overall compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken for the purposes of resolving contested issues through litigation. The Signatory Parties believe that

this Stipulation, taken as a whole, represents a reasonable compromise of varying interests.

3. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation.
4. The testimony of Companies witness Nelson is being filed in support of the Signatory Parties' Stipulation. The Signatory Parties hereby stipulate to the admission of this testimony into the record in this proceeding. To the extent that any non-Signatory Party opposes adoption of the Stipulation, the Signatory Parties reserve the right to file rebuttal testimony in further support of the Stipulation.
5. This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification.<sup>2</sup> If the Commission rejects or modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, then within thirty (30) days of the Commission's Entry on Rehearing, any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission. Upon the filing of such notice, the Stipulation shall immediately become null and void. No Signatory Party shall file a notice of termination and withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement is reached, the Signatory Parties will file the new agreement for Commission review and approval and hearing if necessary.

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<sup>2</sup> Any Signatory Party has the right, in its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

6. Unless the Signatory Party exercises its right to terminate its Signatory Party status or withdraw as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

IN WITNESS WHEREOF, this Stipulation and Recommendation has been signed  
by the authorized agents of the undersigned Parties as of this 30th day of November,  
2010.

**Staff of the Public Utilities Commission of  
Ohio**

## Ohio Power Company

By: Thomas W. McNamara by STW  
per  
affinity

By: H. Van

## Ohio Hospital Association

By: Thomas J. O'Brien by 500 per  
authority

## Ohio Manufacturers' Association

By: Thomas J. O'Brien / by and per  
  acknowledg

The Kroger Company

By: Mack S. Yurich | by SMC per  
authority

Ormet Primary Aluminum Corporation

By: Ernest F. Hard | by SSA per  
activity

**Columbus Southern Power Company**

By: Shirley Ann

**ATTACHMENT 1**

**EXAMPLE OF SALES PROCEEDS DISTRIBUTION**

<u>Line</u>		<u>\$ millions</u>
1	Net Gain*	300.0
2	Up Front Ratepayer Portion	30.0
3	Total Company Remainder	270.0
4	Retail Factor	<u>65%</u>
5	Retail Portion of Remainder	175.5
6	Ratepayer Sharing Percent	<u>75%</u>
7	Retail FAC Credit or (Charge)	131.6
8	Total Ratepayer Credit	161.6

\*Net Gain is described in the Companies' testimony supporting the Stipulation and the \$300 net gain is merely illustrative example