

FILE

8

RECEIVED-DOCKETING DIV

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

2010 DEC -3 AM 10:31

In the Matter of the Review of the Fuel Adjustment Clauses of Columbus Southern Power Company and Ohio Power Company.)	Case No. 09-872-EL-UNC
)	Case No. 09-873-EL-UNC
)	
In the Matter of the 2009 Annual Filing of Columbus Southern Power Company and Ohio Power Company Required by Rule 4901:1-35-10, Ohio Administrative Code.)	Case No. 10-1261-EL-UNC
)	
)	
In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.)	Case No. 10-2376-EL-UNC
)	

**MOTION FOR EXTENSION OF TIME AND STAY OF THE
PROCEDURAL SCHEDULE
OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

Ohio Partners for Affordable Energy ("OPAE"), pursuant to Rule 4901-1-13, Ohio Administrative Code, hereby moves for a four-week extension of the procedural schedule established by the attorney examiner's entry in this docket of December 1, 2010 and for a corresponding extension of the due dates for the filing of testimony for those reasons set forth in the accompanying memorandum. Because the current procedural schedule issued yesterday requires parties to file testimony opposing the stipulation by next Monday, a mere two business days away, OPAE requests a stay of the existing procedural schedule pending a decision on this motion.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Am Date Processed 12/3/10

WHEREFORE, OP&E respectfully requests that its motion be granted. The reasons for granting this motion are contained in the memorandum attached hereto and incorporated herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt", with a horizontal line drawn underneath it.

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
Telephone: (419) 425-8860
FAX: (419) 425-8862
e-mail: cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Fuel Adjustment Clauses of Columbus Southern Power Company and Ohio Power Company.)	Case No. 09-872-EL-UNC
)	Case No. 09-873-EL-UNC
In the Matter of the 2009 Annual Filing of Columbus Southern Power Company and Ohio Power Company Required by Rule 4901:1-35-10, Ohio Administrative Code.)	Case No. 10-1261-EL-UNC
)	
In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.)	Case No. 10-2376-EL-UNC
)	

MEMORANDUM IN SUPPORT OF THE MOTION FOR EXTENSION OF TIME AND STAY OF THE PROCEDURAL SCHEDULE OF OHIO PARTNERS FOR AFFORDABLE ENERGY

On Monday, November 29, 2010, various parties – and some non-parties – filed a stipulation purporting to resolve all issues in Case Nos. 09-872-EL-UNC, 09-873-EL-UNC (“FAC Cases”), and 10-1261-EL-UNC (“SEET Case”). It also binds the signatories to supporting the position of Columbus Southern Power (“CSP”) and Ohio Power Company (“OPCo”, collectively ‘AEP’) in the Application filed in Case No. 2376-EL-UNC (“Merger Case”). Ohio Partners for Affordable Energy (“OPAE”) is a party in the SEET Case which is to be directly resolved by the filed stipulation, and is also a party in the Merger Case, which is partially resolved in the stipulation. OPAE participated in the hearing on Case No. 10-1261-EL-UNC, filing initial and Reply briefs.

OPAE is not a party in the FAC Cases, but is filing a Motion to Intervene in the case today. It is doing this because it has become embroiled in the FAC Cases as a

result of the stipulation filed on November 30, 2010. The Commission will, per precedent, decide whether or not to approve the stipulation based on a review of the entirety of the agreement, a/k/a 'as a package'. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. The FAC Cases have already been fully litigated, but OPAE needs to familiarize itself with the evidence and issues in those dockets. In addition, significant portions of the evidentiary record in the FAC Cases were filed under seal and the briefs are significantly redacted. As a result, OPAE lacks access to much of the crucial information in the case. To effectively litigate the issue of whether the "settlement, as a package, benefits ratepayers and the public interest" and the other two prongs of the Commission's tests of the reasonableness of a stipulation, OPAE needs the opportunity to review all documents filed in the FAC Cases.

OPAE will attempt to craft a confidentiality agreement with AEP assuming intervention is granted. Nonetheless, the amount of time provided by the current procedural schedule is inadequate to permit a comprehensive review of the record in the FAC Cases. OPAE will not be able to effectively represent its interests absent access to the information and adequate time for review.

Ohio Admin Code 4901-1-13(A) provides for extensions upon a showing of good cause. OPAE contends it does have good cause for requesting the extension. OPAE is confronted with a stipulation that covers a major case in which it has not intervened. Absent access to information in that case it will be impossible to fully develop a legal strategy; secure and prepare an expert witness; and prepare for a hearing with a single week.

The hearing transcript in the FAC Cases is 299 pages. Four briefs and reply briefs were filed in the proceeding. Three of the parties, including AEP, filed portions of their briefs under seal. AEP offered three rebuttal witnesses; portions of this testimony are confidential, as is much of the other testimony in the case. The management and performance audit is also a confidential document, and is a key to understanding the case.

Lack of access to critical documents is only part of the problems faced by OPAE as a result of the existing procedural schedule. OPAE requires adequate time to determine whether calling expert or non-expert witnesses to testify at the hearing. Testimony for any expert witness must be filed by Monday, an impossible timeframe when OPAE lacks access to documents in the FAC Cases.

Counsel is also confronted by a difficult choice because of the hearing date, which is one week from today. He is a recently-appointed member of the Public Benefits Advisory Board which has a previously scheduled meeting the morning of December 9, 2010. Matters to come before the Board include a review of the Percentage Income Payment Plan Riders for 2011, the Advanced Energy Fund, and the Percentage of Income Plan Plus ("PIPP Plus") Program. The latter program started on November 1, 2010 and there have been some difficulties in implementation that must be reviewed. In addition, legislation authorizing a three year extension of the Advanced Energy Fund rider has also passed the House. The Public Benefits Advisory Board has the statutory charge of providing advice to the Director of Development regarding these programs. O.R.C. §4929.58. The Board actions have an impact on utility customers throughout the state and Counsel has made a commitment to participate in this activity.

In addition, Counsel also is scheduled to attend the Board Meeting of the Coalition on Homelessness and Housing in Ohio. The meeting has been scheduled for over one year. Finally, Counsel is also committed to attend a meeting of the Duke Energy – Ohio Consumer Collaborative, the only meeting of the Collaborative that has been scheduled this year. OPAE has previously filed with this Commission pleadings reflecting concern for the efficacy of some of the programs in Duke's portfolio. This meeting represents the sole opportunity in 2010 to engage in a dialogue with the Company over the substance and direction of these programs. The Collaborative and its goals have been endorsed by the Commission through decisions and rules.

For these reasons, OPAE requests a stay in the currently announced procedural schedule. It requests that a new procedural schedule delaying the current schedule by four weeks be issued which would provide sufficient time for OPAE to intervene and review evidence presented in the FAC Cases, including evidence filed under seal. It will also provide OPAE with the opportunity to determine whether to file expert testimony or arrange for non-expert testimony and allow the time to develop testimony.

Respectfully submitted,



David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
Telephone: (419) 425-8860
FAX: (419) 425-8862
e-mail: cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief was served electronically upon the following parties identified below in this case on this 2nd day of December 2010.



David C. Rinebolt

Steven T. Nourse
Selwyn Dias
American Electric Power
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
dconway@porterwright.com

Maureen R. Grady
Melissa Yost
Office of Ohio Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, Ohio 43215-3485
grady@occ.state.oh.us
yost@occ.state.oh.us

Thomas W. McNamee
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215-3793
thomas.mcnamee@puc.state.oh.us
sarah.parrot@puc.state.oh.us

Samuel C. Randazzo
Joseph M. Clark
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
jclark@mwncmh.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1500
Cincinnati, Ohio 45202
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Michael R. Smalz
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

John W. Bentine
Mark S. Yurick
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215
jbentine@cswlaw.com
myurick@cswlaw.com

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

Cynthia Fonner Brady
Constellation Energy Resources, LLC
550 West Washington Blvd., Suite 300
Chicago, IL 60661
Cynthia.brady@constellation.com

Jeffrey Jones
Greta See
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
jeff.jones@puc.state.oh.us
greta.see@puc.state.oh.us

Dorothy K. Corbett
Duke Energy Business Services LLC
139 East Fourth Street. 1303 Main
Cincinnati, OH 45202
Dorothy.corbett@duke-energy.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
PO Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Clinton A. Vince
Douglas G. Bonner
Emma F. Hand
SNR Denton
1301 K Street NW, Suite 600 East Tower
Washington, DC 20005
Clinton.vince@snrdenton.com
dan.barnowski@snrdenton.com
doug.bonner@snrdenton.com
emma.hand@snrdenton.com
Keith.nusbaum@snrdenton.com