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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Review of the Fuel )  
Adjustment Clauses of Columbus ) Case No. 09-872-EL-UNC  
Southern Power Company and ) Case No. 09-873-EL-UNC  
Ohio Power Company. )

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**COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER  
COMPANY'S MEMORANDUM CONTRA  
OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
MOTION TO INTERVENE**

Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (collectively, the "Companies" or "AEP Ohio") oppose the Motion to Intervene filed in the Companies' pending fuel adjustment clause audit cases (FAC Audit Cases) on December 2, 2010 by Ohio Partners for Affordable Energy (OPAE). OPAE's intervention request is untimely, and pursuant to Rule 4901-1-11, OAC, OPAE's late intervention may only be granted under extraordinary circumstances. OPAE has not identified any extraordinary circumstance that would warrant excusing its late request.

Pursuant to division (D) of Rule 4901-1-11, Ohio Admin. Code, a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission ... " Division (F) of that rule provides that "[a] motion to intervene which is not timely will be granted only under extraordinary circumstances." The hearing in these FAC Audit Cases took place on August 23 and 24. Accordingly, requests for intervention in these cases for the Companies were due no later than August 18, 2010, three-and-a-half months before OPAE filed its motion. As a result, OPAE's motion to intervene may be granted only if it identifies extraordinary circumstances that excuse its late request.

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OPAE does not identify any circumstances, let alone extraordinary circumstances, that excuse its late intervention request. Acknowledging that the hearing in the FAC Audit Cases already has concluded and, thus, that its intervention request is untimely, OPAE states that it "should be granted intervention for the limited purpose of opposing the stipulation and recommendation filed in these dockets on November 30, 2010." OPAE is already able to oppose the November 30 Stipulation and Recommendation (Stipulation) because it is already a party to Case No. 10-1261-EL-UNC (Significantly Excessive Earnings Test (SEET) Case). As a result of its status as an intervening party in the SEET Case, OPAE may participate fully in the Commission's review of the Stipulation. And, if it continues to oppose the Stipulation, it may present its opposing views for the Commission's consideration, through its own testimony and cross-examination of any proponent witness at the hearing on the Stipulation and through arguments in a post-hearing brief.

OPAE's contention that it requires the opportunity to review the record in the FAC Audit Cases in order to oppose the Stipulation is a specious effort to excuse its late intervention. If OPAE was not sufficiently interested in the FAC Audit Cases to seek timely intervention in them before the hearing, it has no basis for intervening now simply to comment on how the issues in those cases are being resolved. In short, OPAE has a full opportunity to participate in the Commission's review of the Stipulation from its perspective as a party to the SEET case. There is no aspect of its interest that it timely sought to intervene and protect that it will not be able to protect through its status as a party to the SEET Case.

Not only has the intervention deadline passed by nearly three-and-a-half months, all of the testimony has been filed, the evidentiary hearing has been completed and the parties have complete their post-hearing briefing. It would be distracting, disruptive and prejudicial, and bad precedent<sup>1</sup> to grant a new party intervention at this point in the proceedings. It would be an extraordinary remedy without any basis. In short, OPAE's request is excessively late and is supported with no substantive basis.

### CONCLUSION

The Commission should deny OPAE's tardy, unsubstantiated request for intervention in the FAC Audit Cases.



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<sup>1</sup> OPAE references the Commission's granting of The Kroger Company's late intervention in the SEET Case as support for OPAE's late intervention in the FAC Cases. Given that AEP Ohio voluntarily withdrew its opposition to Kroger's intervention and did so as part of a larger compromise settlement of issues, Kroger's late intervention cannot serve as a precedent for OPAE's opposed late intervention in this case.

## PROOF OF SERVICE

I certify that Columbus Southern Power Company's and Ohio Power Company's Memorandum in Opposition was served by First-Class U.S. Mail upon counsel for all parties of record identified below this 3<sup>rd</sup> day of December, 2010.



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