

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Columbus Southern Power Company and</b>	)	
<b>Ohio Power Company, Individually and, if</b>	)	<b>Case No. 11-351-EL-AIR</b>
<b>Their Proposed Merger is Approved, as a</b>	)	<b>Case No. 11-352-EL-AIR</b>
<b>Merged Company (collectively, AEP Ohio)</b>	)	
<b>for an Increase in Electric Distribution Rates</b>	)	
<b>In the Matter of the Application of</b>	)	
<b>Columbus Southern Power Company and</b>	)	
<b>Ohio Power Company, Individually and, if</b>	)	<b>Case No. 11-353-EL-ATA</b>
<b>Their Proposed Merger is Approved, as a</b>	)	<b>Case No. 11-354-EL-ATA</b>
<b>Merged Company (collectively AEP Ohio)</b>	)	
<b>for Tariff Approval</b>	)	
<b>In the Matter of the Application of</b>	)	
<b>Columbus Southern Power Company and</b>	)	
<b>Ohio Power Company, Individually and, if</b>	)	<b>Case No. 11-356-EL-AAM</b>
<b>Their Proposed Merger is Approved, as a</b>	)	<b>Case No. 11-358-EL-AAM</b>
<b>Merged Company (collectively AEP Ohio)</b>	)	
<b>for Approval to Change Accounting Methods</b>	)	

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**OHIO POWER COMPANY’S MOTION SEEKING CLARIFICATION AND  
REQUEST FOR EXPEDITED RULING**

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Ohio Power Company (Ohio Power) files this request pursuant O.A.C. 4901-1-12 asking the Commission for a clarification concerning the approval of the Stipulation in these dockets and the impact of the denial of the Stipulation and Recommendation in the 11-346 et al. dockets. In particular, Ohio Power seeks clarification on the language alluding to the termination date of the distribution rate increase and Ohio Power’s right to withdraw from the agreement under paragraph J on page 12 of the agreement.

Ohio Power asks the Commission to clarify that, if the Company maintained the agreement reached in the Stipulation, including the residential customer credit, decoupling, and support of the Partnership with Ohio through funding, the language in

Section IV(A)(2) will not be interpreted to preclude Ohio Power from seeking new distribution rates at its discretion prior to May 31, 2015. Alternatively, Ohio Power seeks a clarification that its right to withdraw from the Stipulation in this case is preserved pending the reconsideration of the issues in the ESP proceeding based on the inter-relatedness of the issues.

Without clarification from the Commission as requested above, Ohio Power could be forced to withdraw from the Stipulation in this case next Friday March 23, 2012, and prevent the stated Commission approved benefits (including but not limited to the residential credit, decoupling, and PWO funding) from continuing. These and additional points in support of the requested clarification are further developed in the attached memorandum in support. Per O.A.C. 4901-1-12(C), the Company requests an expedited ruling on the motion.

Respectfully Submitted,

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<b>Their Proposed Merger is Approved, as a</b>	)	<b>Case No. 11-354-EL-ATA</b>
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<b>Their Proposed Merger is Approved, as a</b>	)	<b>Case No. 11-358-EL-AAM</b>
<b>Merged Company (collectively AEP Ohio)</b>	)	
<b>for Approval to Change Accounting Methods</b>	)	

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**MEMORANDUM IN SUPPORT OF OHIO POWER COMPANY’S MOTION  
SEEKING CLARIFICATION**

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The purpose of this motion for clarification is to seek a Commission approved clarification that will allow Ohio Power to maintain the benefits negotiated by numerous parties in this case without adversely impacting Ohio Power. The settlement in these cases was predicated on approval of the Distribution Investment Rider (DIR) in the 11-346 et al. (ESP) case. The denial of that entire 11-346 agreement on rehearing (including elimination of the DIR) leaves Ohio Power funding commitments without the corresponding revenue stream to cover those commitments, absent termination of the settlement in these cases. Left without any type of clarification that this situation does

not lock Ohio Power into this structure for multiple years then Ohio Power will be faced with a deadline of March 23, 2012 to exercise its right to withdraw from the settlement agreement. Again withdrawal would result in the loss of the customer benefits of the stipulation, recommencing the immediate litigation of the distribution case, and have the Company facing the decision of whether to exercise its option to implement the rates as proposed in the application pursuant to R.C. 4909.42.

It is the preference of Ohio Power to continue to operate under the Stipulation in this case pending the outcome of the modified ESP, but not if its ability to file a new distribution rate case at the conclusion of the impending ESP proceeding is foreclosed by the agreement.

#### **11-346-EL-SSO et al. ESP Stipulation Terms**

On February 23, 2012, the Commission rejected the previously approved Stipulation and Settlement Agreement in AEP Ohio's ESP proceeding. The agreement signed by the parties on September 7, 2011 and adopted by the Commission on December 14, 2011, had approved a DIR that provided for recovery of certain dollars associated with distribution plant. Ultimately the agreement reached by a subset of the parties and approved initially by the Commission set up a cap for recovery in this rider.

#### **11-351-EL-AIR et al. Distribution Stipulation Terms**

On December 14, 2012, the Commission approved the November 23, 2011 Stipulation and Recommendation signed by fourteen (14) parties to settle the associated Ohio Power distribution rate case filings. The Stipulation recognizes throughout its language the interrelationship between recovery of the DIR in the ESP proceeding as the basis for settlement in the Distribution dockets.

Based upon the ability to collect the DIR, the Signatory Parties crafted a settlement that provided direct benefits to customers and introduced a decoupling pilot program to test recovery. Among other provisions, the Signatory Parties agreed that AEP Ohio would apply a \$62.344 million revenue credit from the DIR recovery to the enumerated terms of the Stipulation. The credit was structured to decrease the increase in the revenue requirement associated with this filing back to zero (\$46.656 million), then to credit an additional \$14.688 million in DIR revenue collected to residential customers, while also providing another \$1 million a year to the Partnership with Ohio initiative. The settlement included the recovery of certain assets and the Signatory Parties' agreement on many rate design and other regulatory issues. The settlement also included a move to test a decoupling pilot program.

However, due to the dependence on the collection of the DIR in the ESP proceedings, the stipulation also included the ability for AEP Ohio to withdraw from the Stipulation and restart the pending litigation of the filed application if the DIR were modified by the Commission in the ESP. Specifically the language on page 12 in paragraph J states:

Signatory Parties to these cases are only agreeing on how to treat the collection of distribution investment if the Commission approves the DIR mechanism as proposed in the ESP II Stipulation before the Commission. The Commission approval of the DIR in the ESP II case is linked to this agreement as a prerequisite to the elements of the bargain reached in these proceedings. Therefore, to the extent the Commission materially modifies the DIR in the ESP II to the detriment of AEP Ohio then *AEP Ohio has the right to withdraw* from this agreement and litigate the issues as if the settlement in these cases had not been reached. AEP Ohio must exercise this right no later than thirty (30) days of the final non-appealable order in the ESP II proceeding.

Absent further rehearing applications to the February 23, 2012 Entry on Rehearing, that action date to make that determination could be as early as March 23, 2012.<sup>1</sup>

### **Basis of Need for Clarification**

As indicated in its notice of intent filed in the ESP docket, AEP Ohio intends to file a proposal for a DIR in its modified ESP proposal at the end of March or beginning of April 2012. However the time to withdraw from the terms of the settlement agreement in these proceedings will pass prior to the order in the modified ESP proceeding. Under the right circumstances, AEP Ohio is willing to continue under the terms of the settlement agreement and provide the credit to residential customers, forego the revenue associated with the DIR that was intended to compensate the Company for its increase in revenue requirement at this time, fund the PWO initiative as promised, continue the decoupling pilot, as well as comply with all the commitments in the Distribution settlement. AEP Ohio is hopeful that the Commission will adopt a modified ESP that contains a DIR. Therefore, AEP Ohio is also willing to allow the right to withdraw from the agreement based on changes to the DIR (in this case the extermination of the ESP September 7, 2011 Settlement) to expire next week, but only if the Company is assured without ambiguity that it has the right, at its sole discretion, to file a new distribution case subject to full Commission consideration anytime after the final order in the modified ESP proceeding.

The settlement agreement did not have a stay-out provision but it did provide language related to what revenue requirement would be in effect at the expiration of the

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<sup>1</sup> If the Commission alternatively clarifies that the final appealable order referenced in Paragraph J refers to the final order issued to resolve the Company's upcoming modified ESP filing (which the Company has already indicated through its Notice of Intent would include a new DIR proposal), then the Company's immediate concerns about withdrawing by March 23 would be deferred.

DIR. Under the ESP Stipulation, the DIR was set to expire on May 31, 2015, and there was an agreement that there would be no proceeding to allow an adjustment to base distribution rates prior to June 1, 2015 (subject to some exceptions). As a corollary provision and to ensure there would not be a unilateral increase in rates collected from customers once the DIR expired, the parties to this distribution settlement agreement included the language of Section IV(A)(2):

The Signatory parties agree that the increase in the distribution base rate revenue requirement of \$46.656 million shall terminate on May 31, 2015. Any change to distribution rates upon expiration of the rates agreed to in this Stipulation shall occur only pursuant to an application for establishing rates filed under R.C. 4909.18.

The provision was included as an attempt to be as clear as possible that the newly agreed revenue increase (intended to be offset by the proposed DIR) would not automatically be collected at the expiration of the offsetting DIR. This language was intended to serve as a security that rates would not unilaterally increase when the DIR expired. Now in the absence of the stay-out language in the rejected ESP stipulation, this language should only be read to ensure that AEP Ohio would be required to file a new distribution case under R.C. 4909.18 and get Commission approval for any subsequent increase based on the new base distribution rate case application. The lack of any recovery of the DIR at this point has not resulted in a unilateral increase in the rates collected from customers to reflect \$46 million more in base distribution rates. The clarification sought by AEP Ohio in this motion is that this is the extent of the purpose of this portion of the agreement and the stipulation as a whole does not bind AEP Ohio into a detrimental financial mechanism through June of 2015.

With a Commission clarification that AEP Ohio is able to file a new distribution rate case when it finds the time appropriate, then the Company will commit to continue under all the agreed terms of the stipulation until such time as new approved rates become effective. AEP Ohio is committing to temporarily forego the recovery of the offsetting DIR at this time, while still fulfilling its responsibilities under the agreement including crediting the residential class and funding the agreed amount to the PWO. Absent any other factors that could change the facts, the Company will commit to not withdraw from the Stipulation and focus its efforts on an efficient processing of the modified ESP proceeding and litigation of the Capacity Charge Case (10-2929). However, if the Commission does not explicitly reject an erroneous interpretation of the Stipulation that would prevent the Company from instituting new rates from a subsequent application until after May of 2015, then the Company plans to withdraw from the Stipulation next Friday, March 23, 2012.

To be clear, AEP Ohio is not seeking a change to the existing agreement. The language of the Stipulation when compared to the language of the now rejected ESP stipulation makes it clear that the 2015 date included in the distribution stipulation referred to the check and balance to ensure the Company could not unilaterally increase base distribution rates in May 2015 to reflect the expiration of the offsetting DIR proceeds. AEP Ohio needs the Commission to verify this reading of the Stipulation to ensure it can continue to operate under the terms of the Stipulation in the near term that requires the Company to fund the commitments the DIR was projected to cover. But the continued credit to residential customers, the support for the PWO and the pilot program decoupling the rates provide valuable benefits for customers. The benefits and terms of



the stipulation are items that AEP Ohio is not interested in interrupting at this time if it is able to avoid further change. Rate certainty in this time of transition and modification of the ESP is good for customers. Conversely, reverting to litigation of these cases and potentially implementing the rates as-filed in the Company's application may not be desirable from the Commission's perspective or that of the parties. AEP Ohio asks that the Commission provide it certainty as well that this attempt to provide that security in the near future will not result in an ongoing harm to AEP Ohio in the form of a potential ongoing payment requirement with no funding source.

### **Conclusion**

AEP Ohio respectfully requests that the Commission provide an expedited ruling with the necessary clarification on the stipulation it approved in these dockets to provide Ohio Power the opportunity to provide stability to customers by continuing the benefits of the Stipulation in the near future, while not requiring the Company to be saddled with a long-term liability.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **Motion for Clarification and Request for Expedited Ruling** has been served upon the below-named counsel via email, this 15<sup>th</sup> day of March, 2012.

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Summary: Motion Seeking Clarification electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company