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March 30, 2007

The Honorable Alan R. Schriber, Ph.D., Chairman
The Honorable Donald L. Mason, Commissioner
The Honorable Ronda Hartman Fergus, Commissioner
The Honorable Judy A. Jones, Commissioner
The Honorable Valerie A. Lemmie, Commissioner
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Re: In the Matter of Columbus Southern Power and Ohio Power Company for Approval of their Plan to Provide Additional Options for Customer Participation in the Electric Market; Case No. 06-1153-EL-UNC.

Dear Chairman Schriber and Commissioners:

On March 23, 2007, Columbus Southern Power Company and Ohio Power Company (collectively "AEP" or "Companies"), Staff of the Public Utilities Commission of Ohio ("Commission"), the Office of the Ohio Consumers' Counsel ("OCC"), Ohio Partners for Affordable Energy ("OPAE") and Ohio Energy Group ("OEG") (collectively, "signatories") submitted a Stipulation and Recommendation ("Stipulation") for the Commission's consideration that purports to comply with the directives of the Ohio Supreme Court's remand of AEP's rate stabilization plan ("RSP")¹ case to address the defect that AEP's RSP failed to provide an option for customer participation in the electric market through competitive bids or other reasonable means, as required by Section 4928.14(B), Revised Code.²

The Stipulation states that the signatories agree that the program contained in the Stipulation and an attached tariff sheet, called the "AEP Green Pricing Competitive Bid Tariff Option," fulfills the requirements of the Supreme Court's directives as well as

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC, Opinion and Order (January 26, 2005).

² *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 511 (2006); see also *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, 340 (2006).

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Bid Tariff Option," fulfills the requirements of the Supreme Court's directives as well as the Commission's order to file a plan that complies with Section 4928.14, Revised Code, in an Entry dated August 9, 2006.

The Stipulation adopts the plan proposed by OCC in its January 12, 2007 comments on AEP's initially proposed competitive bidding process as filed on September 22, 2006 in this case. In OCC's January 12, 2007 comments, OCC acknowledged that it may not be prudent (beneficial to customers) to establish a price for a generation supply service option for customers based on a competitive bidding process and that the Commission should not undertake a competitive bid "...merely for the sake of conducting one." OCC Comments at 3. Instead, OCC proposed a "Green Pricing Competitive Bidding Option" (which OCC called the "Green Pricing Option") and sought to transform the scope of the proceeding on remand from one in which a competitive bidding process is proposed, reviewed and implemented in accordance with the above-referenced statute and the Commission's rules to one wherein its Green Pricing Option is adopted in lieu of a competitive bidding option.

When OCC first proposed its Green Pricing Option, IEU-Ohio opposed the proposal for two main reasons: 1) the wholesale market and its many working parts orchestrated by regional transmission owners or the Federal Energy Regulatory Commission ("FERC") are decidedly dysfunctional and any competitive bidding process laid on top of this dysfunction will do nothing to help Ohio electricity customers secure better service or better prices;³ and 2) there is nothing in Ohio's current electric restructuring legislation that comes close to providing the Commission with jurisdiction to adopt OCC's proposed Green Pricing Option.⁴

Although the signatories agree that the Stipulation containing the AEP Green Pricing Competitive Bid Tariff Option complies with Ohio law and the directives from the Supreme Court and the Commission, parties may not, by their agreement, confer authority on the Commission. *Time Warner AxS v. Public Utilities Commission* 75 Ohio St, 3d 229 (1996). The Commission has an affirmative obligation to follow Ohio law and the directions of the Ohio Supreme Court as a result of OCC's Appeal.

IEU-Ohio continues to recommend that rather than inviting further chaos or wasting more time and money by entertaining the Stipulation, the Commission and OCC should jointly request a stay of any obligation the Commission may have to comply with the remand order until December 31, 2008 because it makes no good sense for the Commission to establish any competitive bidding option given the dysfunction of the market, let alone a program that does not comply with Ohio law or the Court's directives. It is also worth noting that in AEP's RSP case, the Commission adopted AEP's proposal to commence a proceeding to determine how to establish rates in the

³ As IEU-Ohio has previously pointed out, OCC has acknowledged the dysfunction of the wholesale market. See OCC's June 1, 2006 presentation to the Harvard Electricity Policy Group at http://www.ksg.harvard.edu/hepg/Papers/Migden-Ostrander_Wholesale_Retail_0606.pdf.

⁴ See Reply Comments of Industrial Energy Users-Ohio at 2-3.

post-RSP period.⁵ Nonetheless, to date, the PUCO has not initiated any case or other action to address generation pricing for 2009 with the exception of authorizing AEP to further increase rates. IEU-Ohio continues to encourage the Commission, OCC and other stakeholders to work on the larger issues that must be addressed by Ohio to ensure reliable service and reasonable electric rates.

Respectfully submitted,



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⁵ Specifically, in the Opinion and Order, the Commission states:

AEP recommends... that the Commission conduct a proceeding to determine the "manner in which electric generation service should be provided to the companies' customers" after the RSP and report the results to the legislature by December 31, 2005. AEP explains that this provision is intended to avoid facing the same situations at the end of the RSP as we face today.

* * *

This provision of the RSP is acceptable as a recommendation on steps the Commission should consider by the end of the RSP period. The Commission has a mandate to consider all possible options for implementation at the end of the rate stabilization period.

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan, Case No. 04-169-EL-UNC, Opinion and Order at 34 (January 26, 2005).