

FILE

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

2010 DEC -2 PM 5:16

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 **PUCO**

In the Matter of the Fuel Adjustment)
Clauses for Columbus Southern Power)
Company and Ohio Power Company.)

Case No. 09-872-EL-FAC
Case No. 09-783-EL-FAC

MEMORANDUM CONTRA OF
COLUMBUS SOUTHERN POWER COMPANY
AND OHIO POWER COMPANY

On November 30, 2010, Columbus Southern Power Company and Ohio Power Company (collectively "the Companies" or AEP Ohio"), the Staff of the Public Utilities Commission of Ohio (Staff), the Ohio Hospital Association, the Ohio Manufacturers' Association, The Kroger Company, and Ormet Primary Aluminum Corporation (collectively, the "Signatory Parties" or the "Stipulating Parties") filed a Stipulation and Recommendation (Stipulation) that would resolve the issues raised in these cases. As part of their Stipulation, the Signatory Parties jointly recommended a procedural schedule for consideration of the 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.

On December 1, 2010, the Commission's Attorney Examiner issued an Entry establishing a procedural schedule for considering the Stipulation that coincides with the Stipulating Parties' recommendation.

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Also on December 1, the Office of the Consumers' Counsel, Ohio Energy Group, Appalachian Peace and Justice Network, Industrial Energy Users-Ohio, and Ohio Partners for Affordable Energy (Non-Signatory Parties) jointly filed a memorandum contra that opposes the Stipulating Parties' recommended procedural schedule along with a motion that requests an alternative procedural schedule and asks for expedited treatment of their requested procedural schedule. The Non-Signatory Parties also request that the time period for responding to their discovery requests be shortened to five days (from the ten-day time period that currently applies).

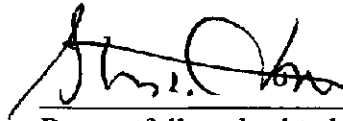
The Non-Signatory Parties contend that the delay that they recommend in the procedural schedule is necessary to provide them with a fair opportunity "to analyze and critique the recommendations of the stipulators." The Non-Signatory Parties further argue that the procedural schedule recommended by the Stipulating Parties (and adopted by the Commission) effectively denies the Non-Signatory Parties their right to be heard.

The Non-Signatory Parties' memorandum contra and related motions should be denied. First of all, the memorandum contra and motion are arguably moot, as the Commission has established the procedural schedule for considering the Stipulation. Second, the prompt consideration of the Stipulation according to the schedule that the Stipulation recommends is an important element of the Stipulation. Accordingly, it was reasonable to adopt a procedural schedule that is consistent with that element of the Stipulation so that, in the event that the Commission ultimately concludes that the Stipulation, as a package, does provide a reasonable basis for resolving these proceedings, it will have the ability to adopt the Stipulation without unnecessarily making a material modification to it.

Third, the complaints by the Non-Stipulating Parties that they will be unable to analyze and critique the Stipulation and, thus, will be denied the opportunity to be heard regarding the Stipulation, unless the Commission delays the procedural schedule, are not credible. The Non-Signatory Parties were invited to multiple negotiation sessions for the Stipulation and were party to numerous additional communications regarding the prospective settlement. They were provided drafts of the Stipulation on a regular basis during the negotiation process. They were invited to comment upon and make suggestions regarding the Stipulation. They were also given the opportunity to propose provisions that might enable them to join the Stipulation. Consequently, they have been aware of and have had the opportunity to inform themselves about, analyze, and critique each element of the Stipulation over the course of those negotiations. Indeed, after reviewing the several draft Stipulations and participating in the negotiation sessions that they elected to attend, these Non-Signatory Parties concluded that they would prefer not to join the Stipulation, which is their right.

In addition, it should not be forgotten that their participation in the settlement negotiation process has taken place at the conclusion of a very lengthy litigation process for both the FAC Audit Cases and the SEET Case. Both of these proceedings have provided the Non-Signatory Parties thorough and unfettered opportunities to conduct discovery, to present testimony, and file post-hearing briefs on the full range of substantive issues to which these proceedings have given rise. The Non-Signatory Parties are more than well-versed in the issues that these proceedings address and the elements of the Stipulation that they have declined to sign, and they have had ample opportunities to participate in the process of litigating these issues and negotiating a settlement of them. The schedule that the Commission has adopted to consider the Stipulation, in light of the exhaustive process that has led up to this (hopefully) final phase of these

proceedings, provides the non-Signatory Parties an adequate opportunity to be heard regarding the Stipulation.



Respectfully submitted,

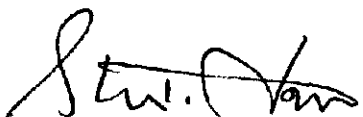
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PROOF OF SERVICE

I certify that Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra was served by U.S. Mail upon counsel for all parties of record identified below this 2nd day of December, 2010.



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