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**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
	)	
	)	

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

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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.

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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.

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**BEFORE  
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	)	

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

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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,



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## 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.



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