



The workshop proceeding which was intended to bring clarity to the statute did not conclude until August 25, 2010. *In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to Amended Substitute Senate Bill 221 for Electric Utilities*, Case No. 09-786-EL-UNC, Entry on Rehearing (August 25, 2010). Even then as to several of the most critical uncertainties in the statute, the Commission declined to provide specificity or guidance. *Id.* Finding and Order at 9, 16, 27 (June 30, 2010).

On September 1, 2010, after several delays in the procedural schedule through no fault of AEP Ohio, the Companies made their 2009 SEET filing and initiated this proceeding. After having fully litigated this case over several months through extensive discovery, multiple rounds of testimony and a robust evidentiary hearing, a diverse set of parties (including the Staff and several customer groups and the Companies) was able to reach an agreement that fully resolved all of the issues in this proceeding as well as resolving all issues in the pending fuel adjustment clause audit cases (Case Nos. 09-872-EL-FAC and 09-873-EL-FAC) and resolving certain issues involving the merger application (Case No. 10-2376-EL-UNC). The Stipulation and Recommendation (“Stipulation”) was filed on November 30, 2010.

Given the longstanding uncertainty regarding the statutory SEET and the outstanding financial issues associated with the Companies’ 2009 earnings, the Signatory Parties agreed to include – as part of the package deal reflected in the Stipulation – an expedited procedural schedule for consideration of the Stipulation. Specifically, Paragraph 1 of Section X provided that the additional testimony, briefing and hearing was to be completed in December so that the case would be fully submitted for decision

before the end of 2010. Based on the objections of non-signatory parties, the Commission (through its Attorney Examiner) swiftly decided to substantially modify this integral component of the Stipulation. In a December 3, 2010 Entry, the Attorney Examiner simply found “that parties will require additional time to evaluate the provisions of the proposed Stipulation, prepare any testimony to be offered in opposition to the Stipulation and prepare for a hearing on the proposed Stipulation.” The Entry went on to establish an open-ended procedural schedule that, at the earliest, would likely have resulted in a decision in the second quarter of 2011.

In addition to explicitly modifying the provisions regarding the timing of the briefing and hearing of the Stipulation, the delayed procedural schedule also blocks implementation of several key provisions in the Stipulation. For example, CSP agreed to modify its 6% rate cap for 2011, as authorized in the *ESP Cases*, in Paragraph 1 of Section IV of the Stipulation. In Paragraph 2 of Section IV, CSP also agreed to forego its First Quarter 2011 filing involving the Environmental Investment Carrying Charge Rider and to forego carrying charges starting in the First Quarter of 2011. Similarly, under Section VI of the Stipulation, the Companies were to undertake an aggressive schedule to sell a coal reserve asset owned by its shareholders, starting in the First Quarter of 2011. That sale process, among other things, was tied to the waiver of carrying charges under Paragraph 1 of Section IV of the Stipulation. Taken together with the explicit modification of Paragraph 1 of Section X of the Stipulation involving the expedited schedule, the December 3 Entry has directly and indirectly modified several of the Stipulation provisions. AEP Ohio is not willing to unilaterally comply with these various commitments under the Stipulation pending the outcome of a Commission decision

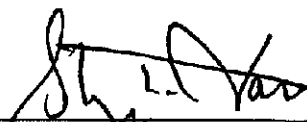
considering the adoption of the Stipulation that is based on the open-ended schedule established in the December 3 Entry.

Pursuant to Paragraph 5 of Section X of the Stipulation, any Signatory Party may terminate and withdraw from the Stipulation based on a material modification of the Stipulation by the Commission. While this boilerplate Stipulation provision also recognizes that the affected Signatory Party may have the right to apply for rehearing and/or attempt to re-negotiate around any modification made by the Commission, those aspects of the Stipulation do not apply here, given that the December 3 Entry irrevocably modifies several key provisions of the Stipulation, as described above. As explained above, the entire Stipulation was premised on being effective by the First Quarter of 2011 and those modifications cannot be cured through rehearing or negotiations and AEP Ohio is waiving its right to pursue rehearing on these issues. Accordingly, as a result of the above-described material modifications of the Stipulation, AEP Ohio hereby permanently withdraws from the Stipulation and terminates the Stipulation.

The other Signatory Parties agree that AEP Ohio has the right to permanently withdraw and terminate the Stipulation under the present circumstances. Consequently, the Stipulation is dissolved, terminated, void and no longer of any effect. Since the Companies had agreed as part of the Stipulation to specific funding commitments for the benefit of certain customer Signatory Parties, the Companies are holding those Signatory Parties harmless by agreeing that the Companies will unilaterally and voluntarily fulfill their obligations under Paragraphs 1, 2 and 3 of Section IX of the Stipulation, notwithstanding that the Stipulation itself is terminated. As a related matter, CSP will also agree as part of its upcoming Electric Security Plan filing to propose and work with

Staff to develop a Phase II pilot program for AEP Ohio's gridSMART program beyond the current footprint of Phase I, which will include dynamic pricing options. Thus, all of the issues presented and litigated in this proceeding are fully submitted and await decision by the Commission.

Respectfully Submitted,



Respectfully submitted,

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## PROOF OF SERVICE

I certify that Columbus Southern Power Company's and Ohio Power Company's Notice of Withdrawal was served by U.S. Mail upon counsel for all parties of record identified below this 16<sup>th</sup> day of December, 2010.



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