

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the 2009 Annual Filing )  
of Columbus Southern Power Company )  
And Ohio Power Company Required by ) Case No. 10-1261-EL-UNC  
Rule 4901:1-35-10, Ohio Administrative )  
Code. )

In the Matter of the Fuel Adjustment ) Case No. 09-872-EL-FAC  
Clauses for Columbus Southern Power )  
Company and Ohio Power Company. ) Case No. 09-<sup>873</sup>~~783~~-EL-FAC

**NOTICE OF WITHDRAWAL FROM THE  
NOVEMBER 30, 2010 STIPULATION**

Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPCo") (collectively, "AEP Ohio" or the "Companies") filed for approval of an Electric Security Plan ("ESP") under section 4928.143, Revised Code on July 31, 2008 – the same day that Amended Substitute Senate Bill 221 ("SB 221") became effective. See Case Nos. 08-917-EL-SSO and 08-918-EL-SSO ("*ESP Cases*"). Under Section 4928.143(F), Revised Code, an ESP with a term of three years or less is subject to the significantly excessive earnings test ("SEET"). The SEET statute on its face fails to give any definitive notice or guidance whatsoever as to what is meant by "significantly excessive earnings."

In the *ESP cases*, the Companies pointed out the uncertainty in the SEET and asked the Commission to give them the fair notice to which they were entitled. *ESP Cases*, Cos. Reply Brief at 132-34. The Commission initially recognized the importance of giving the Companies the requested advance clarification at least with respect to OSS and deferrals, *ESP Cases*, Opinion and Order (March 18, 2009) at 69, but then reversed itself even as to these two issues. *ESP Cases*, Entry on Rehearing at 49 (July 23, 2009).

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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

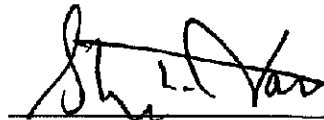
considering the adoption of the Stipulation that is based on the open-ended schedule established in the December 3 Entry.

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,

Steven T. Nourse  
American Electric Power Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215-2373  
Telephone: (614) 716-1608  
Facsimile: (614) 716-2950  
Email: [stnourse@aep.com](mailto:stnourse@aep.com)

Daniel R. Conway  
Porter Wright Morris & Arthur  
Huntington Center  
41 S. High Street  
Columbus, Ohio 43215  
Telephone: (614) 227-2770  
Fax: (614) 227-2100  
Email: [dconway@porterwright.com](mailto:dconway@porterwright.com)

Counsel for Columbus Southern Power  
Company and Ohio Power Company

## 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.



Steven T. Nourse

Thomas W. McNamee  
Sarah J. Parrot  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215-3793  
[thomas.mcnamee@puc.state.oh.us](mailto:thomas.mcnamee@puc.state.oh.us)  
[sarah.parrot@puc.state.oh.us](mailto:sarah.parrot@puc.state.oh.us)

John W. Bentine  
Mark S. Yurich  
Matthew S. White  
Chester Wilcox & Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)  
[myurich@cwslaw.com](mailto:myurich@cwslaw.com)  
[mwhite@cwslaw.com](mailto:mwhite@cwslaw.com)

Samuel C. Randazzo  
Joseph M. Clark  
McNees Wallace & Nurick LLC  
21 East State Street, 17th Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)

David F. Boehm  
Michael L. Kurtz  
Boehm Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45839-1793  
[drinebolt@ohiopartners.org](mailto:drinebolt@ohiopartners.org)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

Michael R. Smalz  
Ohio Poverty Law Center  
555 Buttles Avenue  
Columbus, Ohio 43215  
[msmalz@ohiopoveritylaw.org](mailto:msmalz@ohiopoveritylaw.org)

Joseph Maskovyak  
Ohio State Legal Services Association  
555 Buttles Avenue  
Columbus, Ohio 43215-1137  
[jmaskovyak@ohiopoveritylaw.org](mailto:jmaskovyak@ohiopoveritylaw.org)

Richard Sites  
General Counsel & Senior Director  
of Health Policy Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, Ohio 43215-3620  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

Maureen R. Grady  
Melissa Yost  
Kyle Verrett  
Terry L. Etter  
Michael E. Idzkowski  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[yost@occ.state.oh.us](mailto:yost@occ.state.oh.us)  
[verrett@occ.state.oh.us](mailto:verrett@occ.state.oh.us)  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)  
[idzkowski@occ.state.oh.us](mailto:idzkowski@occ.state.oh.us)

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

Clinton A. Vince  
Douglas G. Bonner  
Daniel D. Barnowski  
Keith C. Nusbaum  
Emma C. Hand  
Sonnenschein Nath & Rosenthal  
1301 K Street NW  
Ste. 600, East Tower  
Washington, DC 20005  
[cvince@sonnenschein.com](mailto:cvince@sonnenschein.com)  
[ehand@sonnenschein.com](mailto:ehand@sonnenschein.com)