

12

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

FILE

**Via Telefax Transmission and
Overnight Mail**

December 3, 2008

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

PUCO

**RECEIVED-DOCKETING DIV
2008 DEC -4 AM 10:25**

In re: Case Nos. 08-917-EL-SSO and 08-918-EL-SSO

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the BRIEF OF THE OHIO ENERGY GROUP ON THE SHORT TERM ESP fax-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service.

Respectfully yours,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Encl.

Cc: Certificate of Service
Chairman Alan R. Schriber
Ronda Hartman Fergus
Valerie A. Lemmie
Paul A. Centolella
Cheryl Roberto
Kim Bojko, Hearing Examiner
Greta See, Hearing Examiner

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician SM Date Processed DEC 04 2008

BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO

IN RE: IN THE MATTER OF THE APPLICATION)	
OF COLUMBUS SOUTHERN POWER)	
COMPANY FOR APPROVAL OF ITS)	
ELECTRIC SECURITY PLAN; AN)	Case No. 08-917-EL-SSO
AMENDMENT TO ITS CORPORATE)	
SEPARATION PLAN; AND THE SALE)	
OR TRANSFER OF CERTAIN)	
GENERATING ASSETS)	

and

IN THE MATTER OF THE APPLICATION)	
OF OHIO POWER COMPANY FOR)	
APPROVAL OF ITS ELECTRIC SECURITY)	Case No. 08-918-EL-SSO
PLAN; AND AN AMENDMENT TO ITS)	
CORPORATE SEPARATION PLAN)	

**BRIEF OF OHIO ENERGY GROUP
ON THE SHORT-TERM ESP**

I. INTRODUCTION

The Ohio Energy Group (OEG) submits this Brief regarding the proposed "Short-Term" Electric Security Plan (ESP) proposal of Columbus Southern Power Company (CSP) and Ohio Power Company (OPC) (collectively the "Companies" or "AEP").

II. ARGUMENT

1. OEG Supports The Companies' Proposal To True-Up The Difference Between Current Rates And The ESP Once The Commission Has Issued Its Final Order.

In Section V.E. of their Application, the Companies addressed what they characterized as the ESP Timing Factor. The Companies propose that if the Commission is unable to issue its final order on AEP's request for an ESP within the 150-day requirement, it should approve a one-time rider to permit recovery of the ultimately approved ESP as if the order had been issued in time to implement the ESP at the start of the January 2009 billing cycle.¹ This "true-up" proposal is reasonable as it is the best available method to approximate the effect of having the Commission-approved ESP rates in effect at the start of January 2009.

2. Staff's Proposed Alternative Plan Is Overly Complicated, Unreasonable And Violates SB 221.

In his Direct Testimony, Staff witness Ed Hess recommended that in the event that the Commission does not issue its final order within the 150-day limit, the Commission should not adopt the Companies' proposed true-up and instead adopt Staff's proposed "Alternative 1/1/09 Plan." The Staff Alternative Plan rejects the Companies' proposed true-up and instead attempts to sweeten the Rate Plan that is currently in effect for the Companies for the period between the expiration of the Rate Plan and the implementation of the Commission's ESP order. The Alternative Plan contains the following terms:²

- Allow increases for generation rates of 3% for CSP and 7% for OP
- Allow the full additional 4% increase of generation rates for both companies,

¹ Rebuttal Testimony of J. Craig Baker p. 3.

² Direct Testimony of J. Edward Hess pp. 8-10..

- Keep the existing Provider of Last Resort (POLR) rates in place,
- Leave the line extension policy in place,
- Price the Monongahela load at the market price recommended by OCC witness Smith
- Price the Ormet load at the market price recommended by OCC witness Smith
- Eliminate the Regulatory Transition Charge (RTC) for CSP

Staff's recommendation would throw out the Companies' simple and reasonable solution to the problem of not having an ESP order within the 150 time limit and replace it with an overly complicated, unreasonable and unlawful alternative.

First, Staff's recommendation violates RC §4928.141(A). That Section provides very clear instructions on how to proceed in the event that an ESP order is not issued within 150 days of its filing. RC §4928.141(A) states that "*the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under Section 4928.142 or 4927.143 of the Revised Code*" In other words, if an ESP order is not issued within 150 days the current "*rate plans*" of OPC and CSP "*shall continue*" until a final ESP order is issued. The Commission is not authorized to raise rates above the amount that is authorized in its rate plans (7% for CSP and 11% for OPC). Staff's proposal violates §4928.141(A) in that it raises rates above the rates approved in the Companies' rate plans.

Staff's proposal to allow the Companies to recover the difference between the generation rate actually paid by the Ormet Aluminum Smelter beginning January 1, 2009 and the market price recommended by OCC witness Smith from ratepayers has the effect of raising rates above the threshold level of the Companies' rate plans. Ormet's 520 MW load is currently served under a two-year special contract that expires at the end of 2008. Ormet's 2007-2008 special contract is for generation at \$43/mWh, which is priced above the otherwise applicable tariff generation rate. Once that contract expires and Ormet

pays only the tariff rate (one-half CSP's rate GS-4 and one-half OPC's rate GS-4), Ormet will receive a rate reduction. Staff's recommendation to award CSP and OPC delta revenue for the difference between serving Ormet at the Commission-approved industrial tariff and OCC's calculation of market pricing will raise rates by approximately \$13.9 million per month. This rate increase is in excess of the 7% CSP rate cap and 11% OPC rate cap authorized in the currently effective rate plan.³ This violates RC §4928.141(A)

Second, Staff's recommendation violates the CSP rate plan. In the Monongahela Power service territory transfer case (Case No. 05-765-EL-UNC) the Commission authorized a Power Acquisition Rider for the period 2006-2008. This Rider compensated CSP for the difference between the tariff rates paid by the former Monongahela Power customers and CSP's purchase of power at market rates to serve the load. But CSP's Power Acquisition Rider was included in the 4% cap portion of the rate plan. *"The Commission notes, however, that CSP's RSP contains the provision that the additional generation adjustments are effectively capped at 4 percent. Accordingly, the calculation of the Power Acquisition Rider must not exceed the 4 percent limit."*⁴

Staff would allow CSP to charge the full 3% plus 4% generation increases, plus an extension of the Power Acquisition Rider. By contrast, the CSP rate plan allows for the Power Acquisition Rider within the 4%; not in addition to it. Staff's double count of the Monongahela Power delta revenue goes beyond the rate plan. This is contrary to the CSP rate plan.

Third, Staff's recommendation is harmful to ratepayers. Staff's proposal would unnecessarily cause rates to go up by approximately \$17.7 million per month in 2009. Any such additional rate increases is particularly unreasonable in this difficult economic environment in Ohio. The U.S. economy, including Ohio, has likely entered a recession that may be severe.⁵ Based on the Companies' earnings for the 12

³ See Baron Exhibit__ (SJB-1R)

⁴ November 19, 2005 Order at p. 18, Case No. 05-765-EL-UNC.

⁵ Third quarter 2008 GDP fell by 0.3%, based on initial GDP reporting.

months ending September 2008 of 11.26% for OPC and 20.11% for CSP, there does not appear to be any need to bolster the Companies through additional rate relief that is not subject to the rigorous review of the ESP hearing process.

The Commission must limit the interim generation increases beginning January 1, 2009 to 3% plus 4% for CSP and 7% plus 4% for OPC. These are the maximum generation related rate increases allowed under the currently effective rate plans. This benefits all ratepayers, including Ormet and the CSP ratepayers formerly served by Monongahela Power, by minimizing the January 1, 2009 rate increase on all customers.

3. If The Commission Decides To Adopt Staff's Alternative Plan It Should Do So Subject To Some Modifications.

For the reasons articulated above, Mr. Hess' Alternative Plan should not be adopted. However, in the event that the Commission adopts the Staff proposal as described in Staff witness Hess' testimony, it should be modified.

Mr. Hess is proposing to award generation rate increases of 3% plus 4% to CSP and 7% plus 4% to OPC. In addition, he is recommending to "*price the Monongahela and Ormet loads at the market price recommended by OCC witness Smith.*"⁶ If Mr. Hess' recommendation is adopted by the Commission, his proposed pricing of the Monongahela and Ormet loads at market prices should be eliminated from the Staff plan. This portion of the Staff's Alternative Plan is not reasonable and should be denied. As stated above RC §4928.141(A) provides that if an ESP is not approved within the 150 day time period, then the rate plans currently in effect will continue. Pricing the Ormet load at market

⁶ Direct Testimony of J. Edward Hess p. 9.

based rates is not part of the currently effective rate plan. Pricing the CSP load that formerly was served by Monongahela Power at market is referenced in the current rate plan, but the delta revenue produced by this provision is to be contained within the 4% provision of the rate plan. Mr. Hess recommends giving CSP the full 4% plus the Monongahela Power delta revenue. This is a double count that goes beyond the rate plan.⁷

Additionally if the Commission wants to reimburse AEP's shareholders for the lost profits resulting from selling to the former Monongahela Power ratepayers and Ormet at the otherwise applicable tariff generation rates instead of at market, the methodology recommended by Mr. Hess should not be adopted. There are at least two major conceptual problems with the recommendation. First, Staff's analysis incorrectly assumes that AEP's shareholders would have retained 100% of the additional off-system sales profits that would be generated by foregoing the sales to Ormet and the former Mon Power ratepayers and instead selling the power at market prices. Contrary to this assumption, AEP's shareholders would have only retained a portion of the additional off-system sales profits. The remainder would flow through to ratepayers in the other states where AEP operates.⁸

Under the AEP Interconnection Agreement, profits from off-system sales are allocated to OPC, CSP, Appalachian Power, Kentucky Power and Indiana & Michigan Power according to their Member Load Ratio. This is basically a measure of each AEP Member Company's relative peak demand. It doesn't make a difference which AEP Member Company's power plant actually made the sale. This means that if Ormet had never been relocated to the retail service territory of CSP and OPC, or if CSP never acquired the former Monongahela Power service territory, the increased off-system sales margins would be allocated among the AEP Member utilities, not directly to AEP shareholders. Depending on the specific rate making treatment of off-system sales margins in each jurisdiction, both ratepayers and AEP shareholders would

⁷ Rebuttal Testimony of Stephen Baron p. 8.

⁸ Id. pp. 9-10.

benefit to varying degrees. For example, in West Virginia, all of Appalachian Power's additional share of off-system sales profits would flow through directly to ratepayers in their version of a fuel adjustment clause. Therefore, Staff's proposal is better for AEP's shareholders than what the actual results would have been had the Ormet and Monongahela Power transactions never occurred (assuming that AEP would otherwise have provided the power as an off-system sale).⁹

Second, the use of OCC witness Smith's market prices of \$73.94/mWh for CSP and \$71.04/mWh for OPC significantly inflates the likely Ormet delta revenues. OCC witness Smith's market price numbers are for the system averages and do not take into account Ormet's 99% load factor and its transmission delivery voltage. For the two-year period where AEP was actually authorized to collect for lost off-system sales margins because of Ormet, the market price was calculated to be \$47.69/mWh in 2007 and \$53.03/mWh in 2008. OCC witness Smith's market price forecasts (which were prepared for a completely different purpose) are 39% - 55% higher. Even if the Commission approved the Staff proposal to provide for delta revenues for the Ormet load, the Staff proposal is excessive.¹⁰

⁹ Id. p. 10.

¹⁰ Id. pp. 10-11.

III. CONCLUSION

The Companies' proposal to "true up" the difference between current rates and the ultimately approved ESP rates is simple and reasonable. It has the effect of instituting the rates that the Commissions deems a "fair, just and reasonable" ESP for the period after the expiration of the Rate Plan and prior to the implementation of the ESP. Staff's proposed Alternative Plan unnecessarily complicates matters by creating an odd transition period in which the Companies would collect additional revenues that have not been vetted by the Commission. The Commission should choose simplicity and reasonableness and approve the Companies' true-up proposal over Staff's Alternative Plan.

Respectfully submitted,



David F. Boehm, Esq.

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: dboehm@BKLawfirm.com

mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

December 3, 2008

COUNSEL FOR THE OHIO ENERGY GROUP

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by ordinary mail, unless otherwise noted, this 3RD day of December, 2008 to the individuals listed on the attached certificate of service:



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.

OHIO POWER COMPANY SELWYN J. R. DIAS SUITE 800 88 E. BROAD STREET COLUMBUS OH 43215-3550	RESNIK, MARVIN AMERICAN ELECTRIC POWER SERV CORPORATION 1 RIVERSIDE PLAZA, 29TH FLOOR COLUMBUS OH 43215
*PETRICOFF, HOWARD VORYS, SATER, SEYMOUR AND PEASE LLP 52 E. GAY STREET COLUMBUS OH 43215	DEBROFF, SCOTT ATTORNEY AT LAW SMIGEL, ANDERSON & SACKS RIVER CHASE CENTER 4431 NORTH FRONT STREET HARRISBURG PA 17110
ROBERTS, JACQUELINE ATTORNEY AT LAW OHIO CONSUMERS' COUNSEL 10 WEST BROAD STREET SUITE 1800 COLUMBUS OH 43215	SCHMIDT, KEVIN (RETURNED MAIL) 33 NORTH HIGH STREET COLUMBUS OH 43215
CONWAY, DANIEL PORTER WRIGHT MORRIS & ARTHUR LLP 41 SOUTH HIGH STREET COLUMBUS OH 43215	GRADY, MAUREEN OFFICE OF CONSUMERS' COUNSEL 10 W. BROAD STREET SUITE 1800 COLUMBUS OH 43215-3485
*MANCINO, DOUGLAS M. MR. MCDERMOTT WILL & EMERY LLP 2049 CENTURY PARK EAST, SUITE 3800 LOS ANGELES CA 90067	HAND, EMMA F SONNENSCHN NATH & ROSENTHAL LLP 1301 K STREET NW SUITE 600 EAST TOWER WASHINGTON DC 20005
RII, ETHAN E SONNENSCHN NATH & ROSENTHAL 1301 K STREET NW SUITE 600 EAST TOWER WASHINGTON DC 20005	EDWARDS, BENJAMIN ATTORNEY AT LAW ONE EAST LIVINGSTON AVE COLUMBUS OH 43215
FONNER, CYNTHIA A CONSTELLATION ENERGY GROUP, INC. 550 W. WASHINGTON ST. SUITE 300 CHICAGO IL 60661	ETTER, TERRY OHIO CONSUMERS' COUNSEL 10 W. BROAD STREET SUITE 1800 COLUMBUS OH 43215
*HOWARD, STEPHEN M VORYS, SATER SEYMOUR AND PEASE LLP 52 EAST GAY STREET P. O. BOX 1008 COLUMBUS OH 43216-1008	MCALISTER, LISA MCNEES, WALLACE & NURIK 21 EAST STATE STREET, 17TH FLOOR COLUMBUS OH 43215-4228
ROMEO, STEPHEN J SMIGEL ANDERSON & SACKS RIVER CHASE OFFICE CENTER 4431 NORTH FRONT STREET HARRISBURG PA 17110	WUNG, GRACE C MCDERMOTT WILL & EMERY LLP 600 THIRTEENTH STREET NW WASHINGTON DC 20005

<p>BELL, LANGDON D BELL & ROYER CO., LPA 33 SOUTH GRANT AVENUE COLUMBUS OH 43215</p>	<p>GOODMAN, CRAIG PRESIDENT NATIONAL ENERGY MARKETERS ASSOC. 3333 K. STREET, N.W. SUITE 110 WASHINGTON DC 20007</p>
<p>REED, PRESLEY R SONNENSCHN NATH & ROSENTHAL LLP 1301 K STREET NW SUITE 600 EAST TOWER WASHINGTON DC 20005</p>	<p>NEILSEN, DANIEL J ATTORNEY AT LAW MCNEES WALLACE & NURICK LLC FIFTH THIRD CENTER, 17TH FL. 21 EAST STATE STREET COLUMBUS OH 43215</p>
<p>*RANDAZZO, SAMUEL C. MCNEES WALLACE & NUICK 21 EAST STATE ST, 17TH FLOOR COLUMBUS OH 43215</p>	<p>ALLEN COUNTY COMBINED HEALTH DISTRICT, DEPT OF PUBLIC HEALTH WIC DIVISION 219 EAST MARKET ST PO BOX 1503 LIMA OH 45802-1503</p>
<p>CITY OF CAMBRIDGE MAYOR'S OFFICE 1131 STEUBENVILLE AVE CAMBRIDGE OH 43752</p> <p>COMMUNITY IMPROVEMENT CORPORATION NORM BLANCHARD 806 COCHRAN AVE CAMBRIDGE OH 43725-9317</p> <p>COSHOCTON PORT AUTHORITY 106 SOUTH FOURTH STREET COSHOCTON OH 43812</p> <p>DELPHOS SENIOR CITIZENS INC 301 EAST SUTHOFF STREET DELPHOS OH 45833</p> <p>ENVIRONMENT OHIO-ENVIRONMENTAL ADVOCATE AMY GOMBERG 203 EAST BROAD STREET, STE 3 COLUMBUS OH 43215</p> <p>FAIRFIELD COUNTY ECONOMIC DEVELOPMENT WILLIAM R ARNETT 210 EAST MAIN ST ROOM 404 LANCASTER OH 43130-3879</p> <p>FOSTORIA AREA CHAMBER OF COMMERCE 121 NORTH MAIN ST FOSTORIA OH 44830</p>	<p>MCDERMOTT WILL & EMERY LLP 28 STATE STREET BOSTON MA 02109</p> <p>BLOOMFIELD, SALLY ATTORNEY AT LAW BRICKER & ECKLER LLP 100 SOUTH THIRD STREET COLUMBUS OH 43215-4291</p> <p>SMALZ, MICHAEL ATTORNEY AT LAW OHIO STATE LEGAL SERVICE ASSOC. 555 BUTTLES AVENUE COLUMBUS OH 43215-1137</p> <p>PETRICOFF, M. VORYS, SATER, SEYMOUR & PEASE 52 EAST GAY STREET P.O. BOX 1008 COLUMBUS OH 43216-1008</p> <p>ROYER, BARTH E BELL & ROYER CO LPA 33 SOUTH GRANT AVENUE COLUMBUS OH 43215-3927</p> <p>CLARK, JOSEPH M ATTORNEY AT LAW MCNEES WALLACE & NURICK LLC 21 EAST STATE STREET, 17TH FL. COLUMBUS OH 43215-4228</p> <p>ECKHART, HENRY ATTORNEY AT LAW 50 WEST BROAD STREET SUITE 2117 COLUMBUS OH 43215-3301</p>

MORGAN STANLEY CAPITAL GROUP, INC
1585 BROADWAY 4TH FLOOR
NEW YORK NY 10036

SOUTHGATE CORPORATION
1499 WEST MAIN ST P.O. BOX 397
NEWARK OH 43058-0397

ST STEPHEN'S COMMUNITY HOUSE
MICHELLE M MILLS
1500 EAST 17TH AVENUE
COLUMBUS OH 43219

BUCKEYE ASSOCIATION OF SCHOOL
ADMINISTRATORS
M. HOWARD PETRICOFF
52 EAST GAY STREET PO BOX 1008
COLUMBUS OH 43216

CONSTELLATION ENERGY COMMODITIES,
GROUP, INC. VP REGULATORY AFFAIRS
JOHN ORR
111 MARKET PLACE, 5TH FL
BALTIMORE MD 21202

DIRECT ENERGY SERVICES, LLC
ERIC STEPHENS
5400 FRANTZ ROAD SUITE 250
DUBLIN OH 43016

DOMINION RETAIL, INC.
GARY A. JEFFRIES
501 MARTINDALE STREET SUITE 400
PITTSBURGH PA 15212-5817

MACY'S INC
TIM LEIGH
5985 STATE BRIDGE ROAD
DULUTH GA 30097

NATURAL RESOURCES DEFENSE COUNCIL
101 N WACKER DR SUITE 609
CHICAGO IL 60606

Steve Nourse @ stnourse@aep.com
Dan Conway @ dconway@porterwright.com
Werner L. Margard III @ werner.margard@puc.state.oh.us
Thomas G. Lindgren @ thomas.lindgren@puc.state.oh.us
John H. Jones @ John.jones@puc.state.oh.us
Ed Hess, Esq. @ ed.hess@puc.state.oh.us
Rick Cahaan @ Richard.Cahaan@puc.state.oh.us
Tom McNamee, Esq. @ thomas.mcnamee@puc.state.oh.us

NEWSOME, ROGER
1850 STATE ROUTE 83
BEVERLY OH 45715

PAULDING COUNTY ECONOMIC
DEVELOPMENT INC
101 E PERRY ST
PAULDING OH 45879

AMERICAN WIND ENERGY ASSOC.
1101 14TH STREET NW 12TH FLOOR
WASHINGTON DC 20005

APPALACHIAN PEOPLE'S ACTION, COALITION
MICHAEL R. SMALZ
OHIO STATE LEGAL SERVICE ASSOC. 555
BUTTLES AVENUE
COLUMBUS OH 43215

CONSTELLATION NEWENERGY, INC.
DAVID I. FEIN
SUITE 300 550 W. WASHINGTON BLVD.
CHICAGO IL 60661

CONSUMERPOWERLINE
17 STATE STREET 19TH FLOOR
NEW YORK NY 10004

DIRECT ENERGY SERVICES, LLC
ERIC STEPHENS
5400 FRANTZ ROAD SUITE 250
DUBLIN OH 43016

INTEGRYS ENERGY SERVICES INC
BOBBY SINGH
300 WEST WILSON BRIDGE ROAD SUITE 350
WORTHINGTON OH 43085