BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Modify Their Accounting Procedures to Defer a Portion of Their Fuel and Fuel-Related Expenses Incurred Beginning January 1, 2009	))))))	Case No. 09-37-EL-AAM

COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S MEMORANDUM CONTRA OHIO PARTNERS FOR AFFORDABLE ENERGY'S MOTION TO DISMISS

On January 16, 2009 Columbus Southern Power Company and Ohio Power Company (the Companies) filed their application in this docket. The Companies seek authority to defer a portion of their fuel and fuel-related expenses incurred beginning January 1, 2009.

The Ohio Consumers' Counsel (OCC) moved to intervene in this proceeding and submitted comments on the application in conjunction with its motion. On February 12, 2009, the Companies filed their responses to OCC's comments.

In the mean time, on February 10, 2009, Ohio Partners for Affordable Energy (OPAE) filed a motion to dismiss the Companies' application. In its Memorandum in Support of its motion, OPAE raises three arguments: lack of authority to permit the requested deferral; the amount to be deferred is too vague to be treated as a regulatory asset; and the Companies have not demonstrated financial harm that justifies "extraordinary measures." (Memorandum in Support, p. 3). For the reasons discussed in

this Memorandum Contra, OPAE's motion should be denied and the Commission should proceed to approve this application.

The first two arguments raised by OPAE simply restate arguments raised in OCC's comments to which the Companies already have replied. The first of these two arguments asserts that Am. Sub. S.B. No. 221 (SB 221) prohibits the deferrals sought by the Companies. (*Id.* 4-6). This argument was fully addressed by the Companies at pages 1-6 of their response to OCC's comments. Rather than burdening the record with a second recitation of their response, the Companies incorporate their prior response into this Memorandum Contra as if fully rewritten.

One additional point concerning OPAE's first argument needs to be made. OPAE argues that the "language of [Sec. 4928.141] is not discretionary" and that the Companies seek "to create a smokescreen to justify the accounting treatment requested." (*Id.* at 4). In making this argument OPAE conveniently ignores the mandatory language in Sec. 4928.143 (C) (1), Ohio Rev. Code, that the Commission "shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date...."

The Companies recognize the difficulty the Commission faced in meeting this non-discretionary mandate. That mandate, however, cannot be ignored by the Commission, as OPAE would have it do. Approval of the requested deferral would be a preliminary step to partially mitigating the effect on the Companies of the Commission's inability to meet the statutory requirement.

That OPAE ignores the 150-day requirement is particularly egregious considering that OPAE was one of the intervenors that requested an extension of the procedural

schedule in the Companies' Electric Security Plan proceeding and in so doing accepted the reasonableness of the Companies' proposal to true-up the Commission's order in that case as if the order had been timely issued. Unfortunately, once the Commission extended the procedural schedule, OPAE abandoned its position that the true-up provision was reasonable. To further aggravate the situation, OPAE now opposes the Companies' application which is made necessary by the uncertain treatment of its true-up proposal. OPAE's abandonment of its prior position at best stretches the boundary of zealous representation and is a sufficient basis for denying its motion in this docket.

OPAE's second argument, which also had been raised by OCC, is that the amount of the deferral "is also not precisely defined." (*Id.* at 7). This argument was addressed by the Companies at page 6 of their response to OCC which should be deemed to be incorporated into this Memorandum Contra as if fully rewritten herein.[1] OPAE's concern that "the *proper* level of the deferral is speculative" (emphasis added) is not cause for denying the application, let alone dismissing it. More often than not, the Commission approves accounting deferral requests without knowing the precise amount of the deferral. The Companies' application includes a provision for trueing-up the deferral to reflect whatever decisions the Commission makes in its ESP order which would affect the amount of the deferral. Therefore, the ultimate level of the deferral will be "proper."

OPAE's final argument contends that the Companies' application does not meet Commission-established criteria for creation of a deferral. (*Id.* at 6-7). OPAE argues that there "simply is no financial harm" to the Companies. (*Id.* at 7). It supports this view by

[1] The thrust of the Companies' response was that without knowing what the actual fuel and fuel-related costs will be and the timing of the Commission's order in their ESP proceeding, it is impossible to know the final amount of the deferrals.

alleging that fuel prices have declined and that fuel costs are lower now than when the Companies' Rate Stabilization Plan was approved on January 26, 2005.[2]

OPAE's arguments are factually wrong and immaterial. The Companies' fuel prices have not declined. OPAE should realize that if fuel prices in the market decline, but remain above the lower fuel costs embedded in the Companies' total fuel costs, those total fuel costs will increase as fuel from expiring low-cost contracts is replaced with more expensive fuel. Likewise, comparing current fuel prices (not the Companies' fuel costs) to fuel prices in 2005, adds nothing to the question of whether the Companies' fuel costs are increasing.

Even if OPAE's arguments had substantive accuracy, which they do not, those arguments are immaterial. As noted previously, the Companies' application includes a true-up of the deferred costs based on the Commission's ESP order. If OPAE's arguments prevail in the ESP, the deferred amount will be adjusted accordingly and customers will be fully protected.

Finally, OPAE cites a string of Commission cases decided fifteen to twenty years ago to support the notion that deferrals should not be authorized unless necessary to avoid financial harm or loss. (*Id.* at 6). These are the same cases cited by OPAE to support the same argument in its Motion to Intervene in Case No. 04-1931-EL-AAM.[3] The Commission's May 18, 2005 Finding and Order in that case permitted the deferral requested in that case. OPAE's continued reliance on these earlier orders that predate

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[2] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan.* Case No. 04-169-EL-UNC, Opinion and Order, January 26, 2005.

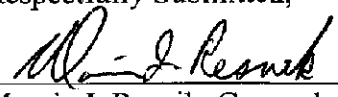
[3] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the The Toledo Edison Company for Authority to Modify Their Accounting Procedures.*

Am. Sub. S.B. No. 3 (SB 3) and SB 221 is no more persuasive in this docket than it was in Case No. 04-1931-EL-AAM. Those earlier cases occurred at a time when a utility was able to file rate cases for bundled electric service with a few or no timing restrictions. Under SB 3 and SB 221 that no longer is the case. Therefore, the need for deferrals is more apparent and granting deferral authority is increasingly warranted.

Moreover, it is obvious that without the deferrals, the Companies will have no opportunity to recover fuel and fuel-related expenses that would have been recoverable if the ESP order had been timely issued or if the Commission accepts the Companies' proposed true-up provision in its ESP proceeding. By definition, the Companies would suffer financial harm and loss. The Commission should reject OPAE's arguments concerning the cases it cites.

For all these reasons the Commission should deny OPAE's motion and should grant the Companies' application.

Respectfully Submitted,



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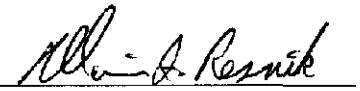
CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Ohio Partners for Affordable Energy's Motion to Dismiss was served by U.S. Mail upon counsel identified below for all parties of record this 17th day of February, 2009.



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