FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company For Approval of an Electric Security Plan; An Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets	:	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to Its Corporate Separation Plan	:	Case No. 08-918-EL-SSO

APPLICATION OF THE OHIO MANUFACTURERS' ASSOCIATION FOR REHEARING OF THE MARCH 18, 2009 OPINION AND ORDER HEREIN

Pursuant to R.C. §4903.10 and Rule 4901-1-35, Ohio Administrative Code, the Ohio Manufacturers' Association ("OMA") hereby applies for rehearing of the Finding and Order issued in the above-captioned case on March 18, 2009 ("Order") as amended by its March 30, 2009 "Entry Nunc Pro Tunc" on an expedited basis. As explained in more detail in the attached Memorandum in Support, the Order in this case is unreasonable and unlawful on the following grounds:

I.

The Commission erred in establishing the term of the ESP beginning January 1, 2009, thereby permitting the companies to collect retro-active rates for the period of January 2009 through March 2009 in violation of Sections

4905.30, 4905.31 and 4928.141 (A) of the Revised Code, Ohio Supreme Court precedent, and the Ohio and U.S. Constitutions.[1]

II.

The Order improperly and arbitrarily excludes the common equity return from a significant portion of these Companies' operations (off-system sales) in comparing the Companies' equity returns with the equity returns of other Companies total operations.

III.

The Order improperly imposes POLR charges on customers who agree not to shop – thus precluding the Companies incurrence of any POLR costs for such customers.

The Ohio Manufacturers' Association
By its Counsel

Langdon D. Bell
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927

[1] The OMA's address of these singular issues arising out of the Commission's Order should not be interpreted as an agreement that other aspects of the Order are without significant legal and factual errors. The OMA reserves the right to support the Applications for Rehearing filed by other parties should the Commission grant rehearing on issues raised by other intervenors.

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MEMORANDUM IN SUPPORT

I.

In their original ESP applications the companies advanced a proposal before the Commission (Section V.E.) to address a situation in which the Commission would not issue an order within the required one hundred and fifty days after the application filing date mandated by Section 4928.143 (C)(1), by proposing a "rider" by which the rates ultimately approved by an Order issued after the expiration of the one hundred and fifty day would be "reconciled" back to the beginning of 2009 billings to recover the revenues authorized by such Order but not collected beginning January 1, 2009.

By such a proposal the Companies set in motion the concept that the Commission could establish retroactive ratemaking so long as the revenues generated by such retroactive ratemaking would be collected in the period following the issuance of an order – a concept the Commission adopted in its March 18, 2009 Order, contrary to law and its own Staff's recommendations addressing Section V.E. of the Companies' ESP.

At the November 17, 2008 hearings on these applications the OMA, through its counsel, moved to strike all portions of the Companies' ESP plan dealing with an "interim plan rider" and to strike the prefiled testimony of all witnesses proposing "interim" rate plans to take effect January 1, 2009 in the event the Commission failed to issue a final order on or before December 31, 2008 based upon the mandate of Section 4928.141 (A) of the Revised Code dictating that the rates in effect on the effective date of Senate Bill 221 must be charged commencing January 1, 2009 in the absence of an issued Order by December 31, 2008. The Commission's March 18th Order flies in the face of RC 4928.141 (A) for the same reasons.

In the clear language of its March 18, 2009 Opinion and Order the Commission made abundantly clear that it was authorizing the Companies an aggregate revenue requirement for the first twelve months of the ESP plan commencing with and based upon rates being effective January 1, 2009, which the Commission attempted to "mask" with its March 30, 2009 Nunc Pro Tunc entry. In so doing, the Commission established rates effective with the first billing cycle in April 2009 allowing the Companies to collect twelve month's of authorized revenue increase in nine months.

By the Commission's "now-for-then" Entry of March 30, 2009 the Commission confirmed its intention to adopt the Companies' initial ESP proposal to prospectively recover revenues it would have recovered during the January – March 2009 period had the revenues authorized in such Order been collected during such period.

II.

In addition the Commission's Order excluding a substantial portion of these Companies' equity returns derived from off-system sales in the application of the

Significantly Excess Earnings Test provided for in Senate Bill 221 violates the requirement that the equity return of these Companies be measured by the equity return of comparable Companies. The exclusion of these Companies' actual and reported returns from off-system sales renders the "comparables" test a fiction, absent the inclusion of all of these Companies' equity return

Instead of identifying "comparables" to the utility operations of Ohio Power Company and Columbus & Southern Ohio Electric Company as those Companies are operated and report their equity returns, the Commission's order has the effect of artificially remaking their operations and reducing their equity returns for purposes of applying the significantly excessive earnings test – all in violation of law.

III.

The Order improperly and unreasonably imposes POLR charges on existing customers who agree not to shop – thus precluding the Companies' incurrence of POLR costs for such customers. The overwhelming evidence in this case and the arguments advanced by the OMA and other intervenors in these proceedings demonstrate that these Companies have experienced miniscule shopping by its existing customers – particularly its residential and industrial customers – and there is little likelihood shopping will be commenced by these customers.

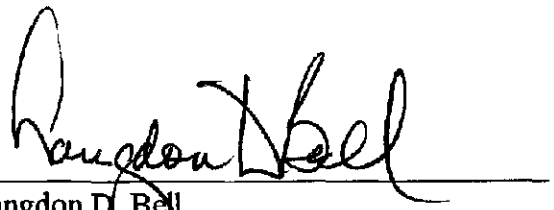
Yet, the Commission's Order herein authorized these Companies to recover millions of dollars in POLR charges from these very customers to "compensate" these Companies for the [virtually non-existent] risk that the Companies' existing customers would do exactly what they have refused to do to date: Shop!, and then seek to return to the service provided by these Companies.

What so poignantly demonstrates the unreasonableness of the Order's imposition of POLR charges on these existing customers that have refused to shop to date and have no interest in shopping in the future, and are willing to agree not to shop (and pay market rates should they decide to shop sometime in the future and then desire to return to the service of these Companies) is the fact the Commission's order allows former generation customers that are currently shopping to avoid such POLR charges by entering into an agreement that – should they return to the Companies' generation service – they agree to pay market rates.

The fact the Commission allows customers that are already receiving generation service from another provider (and thus more likely to "return" to the generation service of these Companies than generation customers of these Companies who have never left and have no interest in leaving the generation service of these Companies) to avoid these POLR charges by simply agreeing to pay market rates should they seek to return to these Companies' service, while denying existing generation customers that have no interest in leaving these Companies' generation service the same opportunity to avoid these POLR charges is discriminatory, unjust, and unreasonable. In the final analysis, imposition of the POLR charge upon this later group of customers is simply a revenue generation vehicle wholly unrelated to any contrived "risk" that such customers may return to the generation service of these Companies they have never exited; represent they will not exit; and, agree that – in the most unlikely event they were to both leave and then seek to return – they agree to pay market rates.

Respectfully submitted,

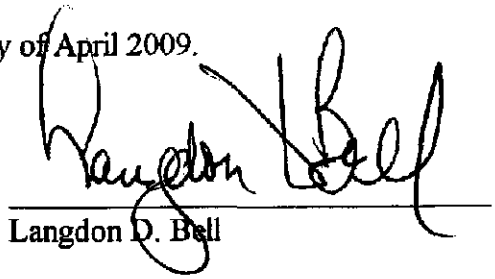
The Ohio Manufacturers' Association
By its Counsel



Langdon D. Bell
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927

CERTIFICATE OF SERVICE

I certify that the foregoing Application for Rehearing was electronically served upon all parties of record this 17th day of April 2009.



Langdon D. Bell

Sbaron@jkenn.com
lkollen@kenn.com
mkurtz@bkllawfirm.com
dboehm@bkllawfirm.com
grady@occ.state.oh.us
etter@occ.state.oh.us
roberts@occ.state.oh.us
idzkowski@occ.state.oh.us
stnourse@aep.com
dconway@porterwright.com
dneilsen@mwncmh.com
jclark@mwncmyh.com
drinebolt
cmooney2@columbus.rr.com
msmalz@oslsa.org
jmaskovyak@oslsa.org
ricks@ohanet.org
david.fein@constellation.com
cynthia.a.fonner@constellation.com
mhpetricoff@vssp.com
jbentine@cwslaw.com
myurick@cwslaw.com
mwhite@cwslaw.com
barthroyer
gary.a.jeffries@dom.com
nmoser@theOEC.org
trent@theOEC.org
henryeckhart
ed.hess@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
sam@mwncmh.com
lmcalister@mwncmh.com
erii@sonnenschein.com
steven.huhman@morganstanley.com
dmancino@mwe.com
smhoward@vssp.com
cgoodman@energymarketers.com
bsingh@integrysenergy.com
kschmidt@ohiomfg.com
sdebroff@sasllp.com
apetersen@sasllp.com
sromeo@sasllp.com
bedwards@aldenlaw.net
sbloomfield@bricker.com
todonnel@bricker.com
evince@sonnenschein.com
preed@sonnenschein.com
glawrence@mwe.com
gwung@mwe.com
stephen.chriss@wal-mart.com
miresnik@aep.com
Kim.Bojko@puc.state.oh.us
Greta.See@puc.state.oh.us