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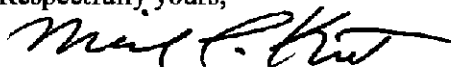
In re: Case No. 08-917-EL-SSO and 08-918-EL-SSO

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the **MEMORANDUM CONTRA OF THE OHIO ENERGY GROUP TO AEP's APPLICATION FOR REHEARING** filed via overnight mail in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



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

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CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) ordinary mail, unless otherwise noted, this 24th day of April, 2009 to the individuals listed on the attached certificate of service:



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BEFORE THE
PUBLIC UTILITY COMMISSION OF Ohio

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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)	
	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)	

MEMORANDUM CONTRA OF THE OHIO ENERGY GROUP
TO AEP'S APPLICATION FOR REHEARING

The Ohio Energy Group ("OEG") submits this Memorandum Contra to the Application for Rehearing of Columbus Southern Power and Ohio Power Company ("AEP").

1. **The Commission Did Not Misapply The MRO/ESP Comparison**

At pages 4-5 AEP asserts that the Commission improperly expanded the MRO/ESP comparison test under §4928.143(C)(1). AEP claims that if "*an ESP in the aggregate is more favorable than the expected results of an MRO the Commission lacks the authority to modify that ESP to make it even more favorable than the expected results of an MRO.*" (Application at 4). The Company further claims that an ESP is "*not to be judged on a component-by-component basis*" because the aggregate impact of an ESP versus the expected results of an MRO is the only test. (Application at 5).

AEP's interpretation of the "*more favorable in the aggregate*" provision of S.B. 221 cannot feasibly be executed by the commission, will not lead to a just and reasonable result, and is therefore invalid under the rules of statutory construction including R.C. §1.47. "*More favorable in the aggregate*" is a judgmental standard that assumes some element of discretion on the part of the Commission. But AEP's interpretation would strip the Commission of any discretion by assuming a level of mathematical certainty that does not exist.

AEP asserts that no element of its ESP needs to be justified as cost-based, reasonable or prudent, and that its ESP must be approved so long as it is even one dollar less expensive than the "*expected results*" of an MRO. First, AEP merely assumes that its ESP as filed was less expensive and therefore more favorable in the aggregate than its assumed MRO. The Commission certainly did not make that finding. Second, to accept AEP's position the Commission would need a very shiny crystal ball. To execute AEP's interpretation of the statute the Commission would need to calculate the expected three-year costs of an MRO with mathematical precision. This is not possible. To precisely calculate the costs of a three-year MRO this Commission would need to precisely predict these issues, at a minimum:

- a. What proportion of the MRO will be market-based? 10%, 20%, and 30% in years one, two and three, or would a future Commission order some lesser percentage to prevent "*an abrupt or significant change*" in rates for all or some classes? §4928.142(E).
- b. For the market portion of an MRO what will be the market price? Suffice it to say that electricity is one of the most volatile commodities in this country and has fallen in price dramatically since AEP's ESP was filed.
- c. What "*benefits*" would be used to offset the costs of an MRO? §4928.142(D).
- d. How would the prospective earnings test in an MRO be applied (compared to the historic earnings test in an ESP) and would it be used to eliminate all or some increases in the non-market portion of an MRO? §4928.142(D)(4).

The mathematical certainty required for AEP's interpretation is impossible in practice and cannot feasibly be executed by the Commission. Therefore, AEP's interpretation violates one of the cardinal rules of statutory interpretation. R.C. §1.47 (Intentions In The Enactment Of Statutes) provides:

"In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended;

(B) The entire statute is intended to be effective;

- (C) *A just and reasonable result is intended;*
(D) *A result feasible of execution is intended."*

When this cardinal rule of statutory construction is applied to S.B. 221, the Commission was fully justified in ordering changes to the proposed ESP. The only feasible way to compare an ESP with the expected results of an MRO is component by component. The ESP changes ordered by the Commission were necessary to achieve the "*feasible*" and "*just and reasonable result*" that we must presume the Legislature and Governor intended.

2. **AEP Is Correct That Additional Revenues Authorized From A Distribution Base Rate Case Or From The Energy Efficiency And Peak Demand Reduction Recovery Rider Should Not Be Included In The Phase-In/Deferral Structure.**

At pages 12-14 AEP seeks clarification that the annual rate caps are not intended to cover revenues associated with any distribution rate case or the Energy Efficiency and Peak Demand Reduction Rider. OEG supports AEP on this issue. Without the clarification sought by AEP the deferrals and associated carrying costs would become unreasonably large.

Respectfully submitted,



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April 23, 2008

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