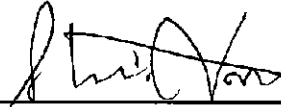


Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF AEP OHIO'S MOTION TO STRIKE AND
MEMORANDUM CONTRA OHBA'S MOTION**

On April 27, 2009, the Ohio Home Builders Association (OHBA) filed a motion requesting permission to file a memorandum contra a portion of Columbus Southern Power Company's and Ohio Power Company's (collectively, the "Companies") application for rehearing that had been timely filed in this proceeding. OHBA attached its proposed memorandum contra to its motion. OHBA's motion should be denied and its memorandum contra should be stricken from the record.

OHBA is not an intervenor in this proceeding and does not even request permission to intervene at this very late stage of the proceeding. Without intervenor status, a person has no standing to file a memorandum contra a party's application for rehearing or, for that matter, to make any substantive filing in this proceeding.

Even if somehow OHBA could get past its non-intervenor status, it still should not be permitted to file its memorandum contra. Sec. 4903.10, Ohio Rev. Code, addresses the extent to which non-parties can get involved in a Commission proceeding. While that statute can permit a non-party to file an application for rehearing, it does not provide an opportunity for non-parties to file a memorandum contra a party's application for rehearing. Further, even in the context of a non-party filing an application for rehearing, that non-party must first receive leave of the Commission to make such a filing. OHBA has not received the Commission's leave to make its filing and its proposed filing is not an application for rehearing.

Sec. 4903.10, Ohio Rev. Code, also provides that if a non-party is to receive leave to file a rehearing application it must show that its failure to make an appearance prior to the order complained of being entered upon the Commission's journal must be due to just cause and that its interests were not adequately considered. OHBA fails on both counts. OHBA asserts that its

failure to participate in this proceeding was due to its limited (presumably financial) resources. The Companies do not question OHBA's assessment of its financial resources. However, simply because OHBA chose to participate in other Commission proceedings, and by doing so left itself in a position where allegedly it was unable to participate in this proceeding, is not due cause for it deciding now to get involved in this case. Further, the record reflects that organizations such as the Appalachian People's Action Coalition and Ohio Partners for Affordable Energy managed to intervene and fully participate in this proceeding. Would OHBA contend that its financial resources are more limited than those organizations' financial resources?

If the Commission accepts limited resources as a reason for not participating in a proceeding until after the Commission enters its order in the case upon its journal, it will surely be inviting many would-be parties to wait on the side line and then ask to pursue rehearing (or as in this instance, respond to actual parties' applications for rehearing). Even if the standards for late intervention to file for rehearing also apply to opposing a party's rehearing application (which they do not), OHBA's alleged limited resources do not qualify as due cause. Similarly, OHBA's claim that its interests were not adequately considered in the proceeding is belied by the Commission's order which did not impose any upfront payments by developers of single or multi-family residential developments. OHBA not seeking its own rehearing of the Commission's order is further evidence of its interests being adequately considered by the Commission.

Even if OHBA's memorandum contra were properly before the Commission, it raises no arguments that relate to, let alone undermine the Companies' line extension arguments on rehearing. OHBA's memorandum contra focuses on its position that in the Commission's line extension rule making proceeding (Case No. 06-653-EL-ORD) OHBA "requested that the Commission eliminate underground installation of lines from the definition of premium services

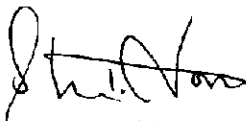
where a municipality or local government requires the burying of lines.” (OHBA Memorandum Contra p.9). OHBA’s quotation from its rehearing application in the rule making proceeding, which again focused on the underground construction/premium service issue, further reflects its focus on this issue in its memorandum contra. (*Id.* at 10).

OHBA’s arguments concerning the underground construction/premium service issue do not respond to any issue raised by the Companies on rehearing. After all, the last sentence of the Commission’s discussion of the line extension issue in its March 18, 2009 ESP order states: “The Companies may continue to charge customers for premium services pursuant to their existing practices.” (Order, p. 49). Given that ruling, there was nothing the Companies would raise on rehearing regarding the issue of premium services, including their existing practices regarding treating underground construction as a premium service.

Similarly, OHBA’s concern with whether the developer or the home buyer should be required to pay the upfront payments is immaterial to the Companies’ rehearing application. The Companies’ rehearing application does not request the imposition of upfront payments for residential developments (other than for premium services). Therefore, OHBA’s comments regarding this issue must be disregarded even if the Commission were inclined to even consider OHBA’s filing.

For the Reasons set forth above, OHBA's motion to file a memorandum contra the Companies' rehearing application should be denied and its memorandum contra should be stricken from the record. Even if the Commission permits the filing to be made as requested by OHBA, that filing does not respond to arguments raised by the Companies. Therefore, OHBA's memorandum contra should be disregarded.

Respectfully submitted,

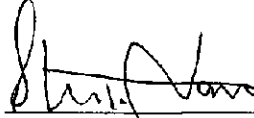


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Counsel for Columbus Southern Power
Company and Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MOTION TO STRIKE AND MEMORANDUM CONTRA THE OHIO HOME BUILDERS ASSOCIATION MOTION** was served by electronic mail upon the individuals listed below this 5th day of May, 2009.



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