

FILE

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Columbus Southern Power Company)
for a Certificate of Environmental) Case No. 08-170-EL-BTX
Compatibility and Public Need for the)
Roberts-OSU 138-kV Transmission Line)

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COLUMBUS SOUTHERN POWER COMPANY'S
MEMORANDUM CONTRA THE LETTERS FILED OCTOBER 20, 2009 AND
OCTOBER 21, 2009 IN THIS DOCKET SEEKING REHEARING

Introduction

Columbus Southern Power Company ("CSP") files this Memorandum Contra the Letters Filed October 20, 2009 and October 21, 2009 in this Docket Seeking Rehearing, to the extent necessary, pursuant to O.A.C. Rule 4901:7-17 and R.C. 4903.10.

On October 20, 2009 the Quarry Pointe Homeowners Association ("QPHOA") and five residents of Dublin Road ("Dublin Road Homeowners") filed letters in this docket purporting to serve as applications for rehearing of the Ohio Power Siting Board's ("OPSB's") September 21, 2009 Opinion, Order, and Certificate in this case. Likewise, on October 21, 2009, the Residents of the Highpoint Subdivision ("Highpoint Subdivision") and the Stonebrooke Village Condominium Association ("Stonebrooke Association") filed letters in support of the QPHOA letter seeking rehearing. (Collectively parties filing letters will be referred to as the "Homeowner Groups").

The Board should deny the requests because the Board has already considered the concerns raised by the Homeowner Groups. There is always local concern with projects sited by the Ohio Power Siting Board. That is in part why the agency was created, in order to look at projects from a regional basis by a neutral third party point of view. The

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Board is served by a number of state agencies to ensure all aspects of the project are considered. Those agencies work closely with applicants to ensure the best possible route, conditions, and need for the projects. In this case the Board's staff worked with CSP, the public provided input, and all Board notice rules were followed. The Board fulfilled all of its statutory duties in the Order it issued and to the extent the letters filed could be considered any type of rehearing application, they should be denied.

There are statutory and administrative code requirements necessary to properly appeal a decision of the Board. CSP respects that these are legal in nature, but that fact does not erase that they are statutory prerequisites. The Homeowner Groups did not satisfy these statutory requirements and the requests should be denied as improper requests for rehearing. In essence the letters filed in the docket are simply letters to the docket and do not rise to the level of triggering the statutory rehearing process of a statewide agency. Under the Ohio Revised Code, the Board must recognize the fatal deficiencies in the letters and deny the improper requests for rehearing.

Standard of Review

According to the Ohio Administrative Code Rule 4906-7-17(D), applications for rehearing of Board decisions must be filed in the manner and form and circumstances set forth in R.C. 4903.10.

R.C. 4903.10 governs the rehearing process in relation to Ohio Power Siting Board and proceedings. The statute, among other things, requires leave to file an application for rehearing to any person, firm, or corporation who did not enter an appearance in the proceeding. In order to grant leave to file the application for rehearing the OPSB must find:

- (A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission or the order complained of was due to just cause;
- (B) The interests of the applicant were not adequately considered in the proceeding.

R.C. 4903.10(A) and (B). The statute also requires any applicant for rehearing or for leave to file an application for rehearing shall give due notice of the filing for such application to all parties who have entered an appearance in the proceeding in the manner and form prescribed by the Commission.

Law and Argument

The Board's Order is valid and the Homeowner Groups' concerns were already adequately considered by the Board. The filings also have technical problems that despite formal in nature amount to statutory requirements that must be followed. The letters filed by the Homeowner Groups' should not be recognized by the Board as valid rehearing documents and should be denied by the Board as deficient. The filing entities were not formal parties to the proceeding. The letters do not qualify as requests for leave to file an application for rehearing under R.C. 4903.10. The letters are statutorily deficient as a rehearing document due to the lack of service on the parties to the proceeding. And even if the Board did consider the letters in spite of their statutory defects the letters fail both prongs of the statutory standard for leave to file an application for rehearing. Individually and collectively the alleged errors amount to improper requests for applications for rehearing and merit denial by the Board.¹

¹ CSP is not responding point by point to the assertions made in the letters due to the fact that the letters are not actual rehearing pleadings and were not served on CSP. CSP reserves the right to respond to any issues raised should the Board find otherwise.

1. The Homeowner Groups failed to file for leave to file an application for rehearing, which is a requirement for any person, firm, or corporation who did not enter an appearance in the proceeding.

First and foremost it is difficult to understand what was filed by the different organizations. The Trustees of the QPHOA group² filed a letter characterizing it as an application for rehearing. There is no appearance in the Board's docket where QPHOA made a formal appearance at any point in the proceeding. Under R.C. 4903.10, the lack of a previous appearance requires a request for leave to file an application for rehearing. QPHOA wrote in its letter,

Therefore, the QPHAO and individual homeowners are appealing the September 21 decision by the Ohio Power Siting Board with regards to the above case and submitting this application for a rehearing.

There is no mention of the authorizing statute or the proper procedure to request leave to file an application for rehearing. The other letters suffer from the same defect as the QPHOA letter and should be dismissed. The Highpoint Subdivision provides a reference to the QPHOA letter and seeks "Joinder in the Appeal and Application for Rehearing...." The Dublin Road residents asked that the Board "record this appeal for a rehearing and approve an alternate plan...." Finally, the Stonebrooke Village Condominium Association Board letter references the QPHOA letter and states that the Association is "in full and complete consensus with the views and opinions expressed in that Application."

² If the letter filed by QPHOA is considered by the Board to be a valid legal filing seeking rehearing there is a serious question of whether the Trustees are allowed to file the legal document or whether they are required to file the statutory governed document under the signature of legal counsel.

None of the letters comply with the statutory prerequisite to initiate a rehearing process under R.C. 4903.10, because none of the filings seek leave to file an application for rehearing. Likewise, it is not clear that they all are seeking rehearing at all as opposed to just supporting the QPHOA's letter. In either instance, the document filed in the docket fails to comply with a valid request for leave to file an application for rehearing and does not qualify as a valid application for rehearing. CSP respectfully requests that the Board recognize the deficiencies in the letters and deny the requests as barred by the Ohio Revised Code.

The lack of any proper service of the letters is also a fatal statutory defect requiring Board denial of the requests. The Homeowner Groups did not comply with the requirement in R.C. 4903.10 to "give due notice of the filing of such application to all parties who have entered an appearance in the proceeding in the manner and form prescribed by the commission." CSP did not receive an official service copy from any of the Homeowner Groups. On May 6, 2009 the City of Upper Arlington was granted intervention into the proceeding and CSP is a party to the case as the entity filing the application. And there is no indication on any of the letters that the City of Upper Arlington was served a copy of the letters. The statute requires service upon the parties to the case in order to validate an application for rehearing or request for leave to file an application for rehearing. The lack of notice of any of the Homeowner Groups' letters is a fatal statutory flaw requiring denial of any procedure under R.C. 4903.10.

2. The Homeowner Groups do not satisfy the statutory standards to be awarded leave to file an application for rehearing under R.C. 4903.10.

Assuming for the sake of argument that the Board accepts the letter filings as valid requests for leave to file an application for rehearing, the Homeowner Groups'

letters still fail to satisfy the statutory criteria to be granted leave to file an application for rehearing under R.C. 4903.10.

- a) **The Homeowner Groups do not establish that their failure to enter an appearance prior to the entry upon the journal of the commission or the order complained of was due to just cause.**

The Dublin Road homeowners give no explanation of why their failure to enter an appearance was due to just cause. In fact, they fully admit in their letter that they had full knowledge of the project and spoke at the Board's public hearing on July 14, 2009. The Dublin Road homeowners had full notice of the project and had time to discuss the project with CSP and present public comments to the Board on the public record.

The other Homeowner Groups each attack the Board's notice provisions by asserting a lack of notice of the project. The Highpoint Subdivision letter states "we were not properly informed." The Stonebrooke Village letter stated they did not receive any correspondence concerning the proposal. QPHOA admits they received a letter providing notice of the project but that the description of the project was deceptive. The QPHOA letter also includes an argument that newspaper readership is declining and online notification would be practical.

These arguments ignore the notice requirements followed by CSP in this case and reflected in the docket. The Board has very specific notice provisions in its rules and all of those rules were followed by CSP. O.A.C. Rules 4906-5-06, 4906-5-07, 4906-5-08, and 4906-5-09 govern the various levels of notice required in this case. These rules carry out the requirements of R.C. 4903.03 and R.C. 4903.06. The Board docket contains the different proofs of service and copies of notices published in a variety of periodicals including the Columbus Dispatch. If the administrative rules governing notice

requirements are inadequate to inform these homeowners of issues going on in their community, then that is a matter to take up in a rulemaking proceeding not in this case. CSP complied with the notice requirements.

CSP respectfully request that, to the extent necessary, the Board find the Homeowner Groups fail to satisfy this standard for approval for leave to file an application for rehearing.

b) 'The Homeowner Groups' letters also fail to provide the Board any basis to find that interests of the applicant were not adequately considered in the proceeding, the second statutory requirement under R.C. 4903.10.

The Dublin Road homeowners expressed their views on the public record in the public meeting. CSP even filed the affidavit of Ellen Regennitter in the record on July 17, 2009, to address concerns raised in the public hearing. The Board's process provides interested persons an opportunity to provide comments in the public hearing format without making a formal appearance in a case. The Dublin Road homeowners presented their concerns and those were part of the record considered by the Board in its final decision. Accordingly, to the extent necessary, the Board should find that the Dublin Road homeowners' letter fails to establish the statutory standard required to receive leave to file an application for rehearing.

The other Homeowner Groups also fail to provide the Board a basis for finding that their interests were not adequately considered in the proceeding. These other letters raise many of the same concerns raised by the Dublin Road homeowners in their letter and previously in their public comments. As the Board is already aware there is a transcript of the public meeting in the Board's docket. Beyond the issues raised in the public comments it is important to point out that the Board is well-versed in the siting of

transmission projects. The Board's staff is very involved in the process and provides a staff report considering the impact of the entire project and the public convenience and necessity. This review includes the portion of the project at issue in the Homeowner Groups' letters. These particular residents may not have raised the concerns in this case, but the concerns were raised and were in the record for the Board's overall consideration. Accordingly, to the extent necessary, the Board should find that the Homeowner Groups' letters fail to establish the statutory standard required to receive leave to file an application for rehearing.

Conclusion

CSP respectfully requests that the Board follow and enforce its rules and the statutory framework for rehearing and deny the letters seeking rehearing as unnecessary, improper, and deficient.

Respectfully submitted,

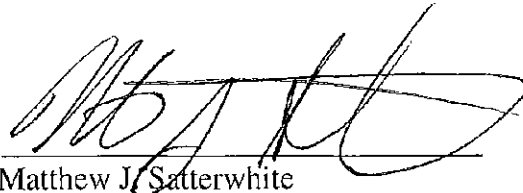
A handwritten signature in black ink, appearing to read 'Matthew J. Satterwhite', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Columbus Southern Power Company's MEMORANDUM CONTRA THE LETTERS FILED OCTOBER 20, 2009 AND OCTOBER 21, 2009 IN THIS DOCKET SEEKING REHEARING was served this 30th day of October 2009 upon the following individuals, by regular first class mail, postage prepaid:



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(To the extent any of the above names are misspelled or have errors the addresses were handwritten and difficult to read and no attorney or point of contact was designated)

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