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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 10-517-EL-WVR
and Ohio Power Company for a Limited)
Waiver Pursuant to Section 4901:1-35-02 (B))

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
APPLICATION FOR LIMITED WAIVER**

Columbus Southern Power Company and Ohio Power Company (the Companies), both of which are electric utilities as defined in §4928.01 (A)(11), Ohio Rev. Code, seek a limited waiver that would extend the May 15th filing requirement set out in §4901:1-35-10, Ohio Admin. Code, to July 15, 2010. The Companies seek the limited waiver pursuant to §4901:1-35-02 (B), Ohio Admin. Code, which provides:

The commission may, upon application or motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

While §4928.143 (F), Ohio Rev. Code, requires that the Commission conduct the Significant Excessive Earnings Test (SEET) for the Companies, the statute does not set a date for the filing of data by the electric utilities subject to the SEET. Therefore, the May 15th date is not required by statute and can be waived by the Commission.

Good cause for granting the requested limited waiver exists.

The May 15th filing date is the result of the Commission's rule making proceeding in Case No. 08-777-EL-ORD. As the Commission's docket in that case reflects, the rule

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making process overlapped with the Companies' preparation of their Electric Security Plan (ESP) proceeding and the Commission's processing of that proceeding.

In the July 2, 2008 Commission Entry publishing these and other rules for comment, it was proposed that SEET related data would be filed within 90 days after each annual period that would be subject to the SEET. In the Companies' July 22, 2008 comments in that docket it was pointed out that relevant data regarding companies of comparable risk would not be available within a 90-day period and specifically noted that "ValueLine data for companies is typically not available until 180 days after the year end." (Companies' Comments, p. 10). In the Companies' ESP proceedings, their witness, Dr. Makhija testified as follows:

A practical issue is related to the timing of the application of the Significantly Excessive Earnings Test. Compustat represents a widely acknowledged source for accurate financial and accounting data for publicly traded U.S. corporations, and its release marks the availability of reliable data. The complete set of Compustat data for a calendar year typically is not fully released until the end of July of the next year. For example, Compustat recently announced that the full data for 2007 are likely to be released sometime during the last week of July, 2008. This means that the earliest date for a complete application of the Significantly Excessive Earnings Test for a particular year should typically be no sooner than the end of August of the next year. (Companies' Ex. 5, pp. 11, 12).

In its September 17, 2008 Finding and Order in the rule making docket the Commission re-wrote the provisions regarding the data that is to be submitted as part of the SEET process. The Commission "recognized that the income statement and balance sheet information which was being sought is satisfactorily contained in the FERC Form 1 and the Security and Exchange Commission (SEC) 10-K." (Finding and Order, p. 4). Because the sources of electric utility financial data was changed, "the date for the submission of the filing for the annual review [was changed] from April 1 to May 15."

(*Id.*) The Commission did not discuss the Companies' concerns with the availability of relevant data for the comparable companies to which the Companies would be compared.

The final version of §4901:1-35-10, Ohio Admin. Code, requires a May 15th filing of "the information set forth in paragraph (C) of rule 4901:1-35-03 of the Administrative Code as it relates to excessive earnings." Paragraph (C)(10)(a) of that rule sets out the filing requirements for the SEET analysis under §4928.143 (F), Ohio Rev. Code. These filing requirements are:

1. Testimony and analysis demonstrating the return on equity that was earned during the year *and the returns on equity earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility.* (emphasis added).
2. The federal energy regulatory commission form 1 (FERC form 1) in its entirety for the annual period under review.
3. The latest securities and exchange commission form 10-K in its entirety.
4. Capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP.

The heart of these filing requirements appears to be the electric utility's testimony and analysis regarding its return on equity during the year being tested *vis a vis* the returns on equity earned during the same period by the publicly traded companies that face comparable business and financial risks as the electric utility. Yet the information regarding those companies will not be available by May 15, let alone sufficiently prior to May 15 to enable the Companies to perform the necessary analysis and prepare testimony by that date.

It is the Companies' understanding that the required information will not be available from ValueLine until approximately the end of May 2010. At that time the Companies believe they will need about 45 days to analyze the data and prepare their

required testimony. Consequently, the Companies believe that good cause exists to waive the May 15th filing date and permit the Companies to make their required filing no later than July 15, 2010. To the extent the information becomes available prior to the end of May the Companies will advance their filing date accordingly. If the availability of the ValueLine data is unexpectedly delayed, the Companies may need to request a further extension.

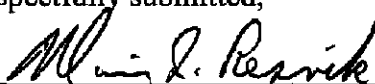
Besides the unavailability of the data needed for a May 15th filing, the continuing process established in the “SEET Workshop” (Case No. 09-786-EL-UNC) supports the granting of the Companies’ requested limited waiver. The SEET Workshop proceeding raised 11 SEET-related questions on which the Commission sought input from interested parties. The expectation is that based on the Staff’s input, the comments and reply comments filed in Case No. 09-786-EL-UNC, and the on-the-record dialogue conducted by the Commission on April 1, 2010, the Commission will provide insight regarding its thoughts on these questions.

It is important to note that many of these questions go to the heart of the SEET analysis. For instance, the Commission sought input on what is meant by “significantly in excess of the return on common equity,” how are “significantly excessive earnings” to be determined, and what adjustments should be included in the SEET calculation. While parties may not be bound by the Commission’s guidance on such critical questions, the electric utilities that are required to make SEET filings should have adequate time to consider the Commission’s guidance.

Section 4928.143 (F), Ohio Rev. Code, and §4901:1-35-03 (C)(10), Ohio Admin. Code, both provide that the burden of proof for demonstrating that significantly excessive

earnings did not occur is borne by the electric utility. The data needed to meet that burden of proof will not be available by May 15th. Also adequate time should be allowed for considering the Commission's guidance on critical SEET-related questions raised in Case No. 09-786-EL-UNC. Therefore, the Commission should find that good cause has been shown to grant the Companies' limited waiver request and direct that their SEET filing be made no later than July 15, 2010.

Respectfully submitted,



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