

FILE

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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

2010 MAY -3 PM 4:23

In the Matter of the Application of )  
Columbus Southern Power Company )  
And Ohio Power Company for a Limited )  
Waiver Pursuant to Section 4901:1-35-02(B). )

PUCO  
Case No. 10-517-EL-WVR

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**RESPONSE TO AEP'S APPLICATION FOR LIMITED WAIVER  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL, OHIO ENERGY GROUP,  
OHIO MANUFACTURERS' ASSOCIATION,  
AND THE OHIO HOSPITAL ASSOCIATION**

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On April 16, 2010, the Columbus Southern Power Company and Ohio Power Company ("AEP" or "Companies") sought a waiver that would extend the May 15<sup>th</sup> informational filing required in Ohio Adm. Code 4901:1-35-10 by two months, until July 15, 2010. Under that provision of the rules, the Companies must submit information set forth in paragraph (C) of rule 4901:1-35-03, Ohio Adm. Code, on May 15 of each year to initiate the annual significantly in excess earnings test (SEET) review. The SEET is the primary mechanism in S.B. 221 for protecting Ohio customers from unreasonable rates for electricity service, which is accomplished by preventing utilities from earning significantly excessive profits.

The Office of the Ohio Consumers' Counsel ("OCC"--representing 1.2 million residential customers of the Companies), the Ohio Manufacturer' Association ("OMA"--representing over 1600 large and small industrial manufacturers), the Ohio Hospital Association ("OHA"--representing 170 primary care facilities and 40 health systems

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across Ohio), and the Ohio Energy Group (“OEG”—representing 22 of Ohio’s most energy-intensive industries) submit this response to the Companies’ application.

The annual SEET review is, per R.C. 4928.143(F), mandatory in several respects. It requires the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to consider, following the end of each year of an approved electric security plan (“ESP”), if the ESP resulted in excessive earnings as measured by SEET. Once the Commission finds that the ESP provisions did result in significantly excessive earnings, it “shall” require the electric distribution utility (“EDU”) to return the excess to consumers.

In determining whether earnings are significantly excessive, the burden of proof for demonstrating that significantly excessive earnings did not occur is on the EDU. The Commission has determined that certain information should be filed in order to assist in the SEET review. Included in the information required to be filed in the SEET review process are: testimony and analysis demonstrating the return on equity that was earned during the year, along with returns on equity earned during the same period by publicly traded comparable companies; FERC Form 1 in its entirety for the annual period under review; the latest Securities and Exchange Commission Form 10K in its entirety; and the capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP. Ohio Adm. Code 4901:1-35-03(C) (10) (a).

The Companies contend that the comparable information—the returns on equity earned by publicly traded companies that face comparable business and financial risks – will not be available until the end of May 2010. They additionally allege that they need 45 days from that point to analyze the data and prepare their required testimony.

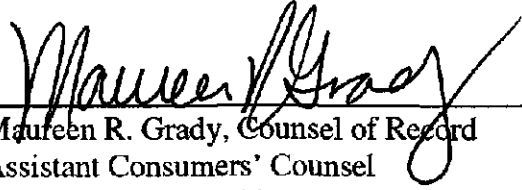
Application at 3.

Notably, the Companies do not contend that any of the other information that is required to be filed is not available on May 15, 2010. That information includes testimony on the return on equity earned during the year, the FERC Form 1, the SEC Form 10K, and the capital budget requirements. Because the Companies have failed to show good cause to justify delaying the filing of this other information, the Companies should be required to file this information on May 15, 2010. Additionally, the Companies did not claim that this other information will not be available on May 15, 2010. A timely filing of such information will enable parties to begin their SEET analysis promptly, on or before May 15, 2010. This will assist the Commission in securing an expeditious return to customers of the amount of excess earnings through prospective adjustments or refunds.

OCC, OEG, OHA, OMA, and Citizen Power urge the Commission to limit any waiver to the Companies, so that no more than the comparable earnings information is permitted to be filed late. The Commission should deny the waiver as it pertains to all of the other information required as part of the SEET review process.

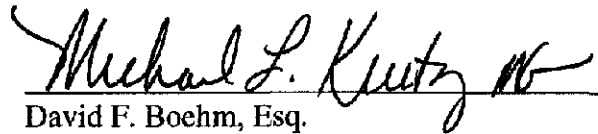
Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



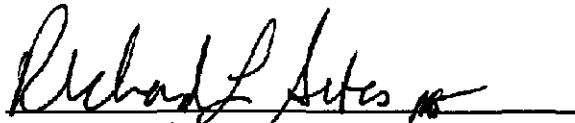
Maureen R. Grady, Counsel of Record  
Assistant Consumers' Counsel  
Michael E. Idzkowski  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574 (Telephone)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[idzkowski@occ.state.oh.us](mailto:idzkowski@occ.state.oh.us)



David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 East Seventh St., Ste. 1510  
Cincinnati, OH 45202  
(513) 421-2255 (Telephone)  
(513) 421-2764 (Facsimile)  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mikurtz@BKLawfirm.com](mailto:mikurtz@BKLawfirm.com)

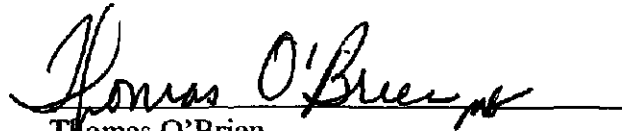
**Attorneys for Ohio Energy Group**



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Richard L. Sites  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620  
(614) 221-7614 (Telephone)  
(614) 221-4771 (Facsimile)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

**Attorney for Ohio Hospital Association**



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Thomas O'Brien  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, OH 43215-4291  
(614) 227-2335 (Telephone)  
(614) 227-2390 (Facsimile)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

**Attorney for Ohio Manufacturers'  
Association**

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following parties by regular U.S. Mail Service, postage prepaid, this 3rd day of May, 2010.

  
Maureen R. Grady  
Assistant Consumers' Counsel

Duane Luckey  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 E. Broad St., 6<sup>th</sup> Fl.  
Columbus, OH 43215

Steven T. Nourse  
Marvin I. Resnik  
John C. Crespo  
AEP Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, OH 43215

Daniel R. Conway  
Porter, Wright, Morris & Arthur  
Huntington Center  
41 S. High Street  
Columbus, OH 43215