BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to S.B. 221 for Electric Utilities.	))))	Case No. 09-786-EL-UNC

COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM CONTRA
THE CUSTOMER GROUP'S APPLICATIONS FOR REHEARING

Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, "AEP Ohio") submit the following memorandum contra the applications for rehearing that the Office of the Ohio Consumers' Counsel (OCC), the Ohio Energy Group (OEG), the Ohio Hospital Association (OHA), the Ohio Manufacturers' Association (OMA), and Citizen Power, Inc. (collectively, "the Customer Group") filed on June 30, 2010 and August 4, 2010. In their July 30th application for rehearing, the Customer Group seeks rehearing of the Commission's June 30, 2010 Finding and Order in this proceeding, in which the Commission made various determinations regarding its guidelines for implementing the significantly excessive earnings test (SEET) that S.B. 221 requires for electric utilities. In their August 4th rehearing request, the Customer Group objects to the Commission's July 14, 2010 Entry that extended from July 15, 2010 until September 1, 2010 the date by which electric utilities must file information and testimony regarding the SEET for 2009. As explained below, neither of the Customer Group's applications for rehearing should be granted.

The July 30, 2010 Application for Rehearing of the June 30, 2010 Finding and Order

In its July 30, 2010 application for rehearing of the Commission's June 30, 2010 Finding and Order, the Customer Group raises two issues. First, it contends that the Commission erred by deciding that the treatment of off-system sales (OSS) is more appropriately addressed in the context of individual SEET proceedings for electric utilities than by issuing guidelines on the topic in this case. The Customer Group argues, at pages 4-5, that by failing to determine, in advance, how OSS should be treated in the upcoming SEET proceedings, the Commission has improperly "sidestepped" the issue and, thereby, has somehow violated §4928.143(F), the statutory provision of S.B. 221 that requires the Commission to apply a SEET annually to each electric utility that has an approved electric security plan (ESP).

There is no statutory mandate that the Commission issue guidelines addressing how it would approach, or resolve, any issue relating to the annual SEET proceeding that § 4928.143(F) requires. Accordingly, there is no legal requirement that the Commission determine in advance of an electric utility's individual annual SEET proceeding how it will resolve a particular issue that might arise in that utility's upcoming annual SEET proceeding. Consequently, there simply is no basis for OCC's argument that, by not determining in advance, through guidelines, how OSS would be treated in the upcoming individual SEET proceedings, the Commission has somehow violated § 4928.143(F). Nor is it accurate to characterize what the Commission has done as unreasonably "sidestepping" the issue. The Commission specifically allowed that it would address the proper treatment of the issue in the electric utilities' individual SEET proceedings.

At pages 5-8, the Customer Group's argument in support of its first rehearing issue degenerates from addressing the procedural issue it actually raised in its application for rehearing

– that the Commission should have decided the OSS issue by issuing a guideline addressing it in this proceeding – to arguing the merits of the OSS issue, which is an issue that it cannot (and did not) raise on rehearing because the Commission did not decide how OSS would be treated in its June 30 Finding and Order. Accordingly, none of these arguments that the Customer Group make regarding how OSS ought to be treated in the SEET proceedings are germane to the rehearing issue that the Customer Group has raised. The Customer Group will have an opportunity to make these merit arguments regarding the proper treatment of OSS (and each electric utility will be able to make its merit arguments) in the individual SEET proceedings.

The Customer Group's second ground for rehearing of the June 30th Finding and Order is that the Commission erred by failing to issue guidelines regarding interest on potential refunds of significantly excessive earnings. This rehearing issue is also meritless. First, as is the case with the regard to the Customer Group's rehearing issue regarding OSS, there is simply no statutory requirement that the Commission address the issue of interest on potential SEET refunds through guidelines issued in advance of individual electric utilities annual SEET proceedings. Indeed, there is no specific requirement that interest be paid in the event that the Commission determines that an electric utility has failed the SEET and that the significantly excessive earnings are attributable to provisions in the utility's ESP.

Second, the Customer Group's argument, at page 10, that the failure to issue guidelines requiring interest on SEET refunds violates §§4909.15 and 4909.151 fails because neither of those statutory provisions is applicable to the rates that are established pursuant to an ESP under §4928.143. The Customer Group seems to recognize this point when it allows, also at page 10, that the effect of not providing interest "violates the *spirit*" of these two provisions. (Emphasis added.) The Customer Group's additional argument that the failure to issue a guideline

addressing the issue of interest on potential refunds is unlawful because it nullifies §4928.143(D), (E), and (F) is also plainly wrong. There is no aspect of those provisions that requires the Commission to issue a guideline on, or otherwise address, this topic in advance of the electric utility's individual SEET proceeding.

In any event, the Customer Group will have an opportunity to address the issue of interest on potential refunds in the context of the utility's SEET proceeding. If the Commission finds that there are no significantly excessive earnings that are subject to being returned to consumers, the issue would be moot. In other words, it makes sense to defer this issue to the utility's SEET proceeding.

Notably, the Customer Group, until now, wholeheartedly agreed with this approach. Specifically, in connection with SEET Workshop Topic No. 10, the Customer Group advocated, at page 22 of its initial comments, that the Commission should not determine the mechanism to be utilized – including whether and how much interest should be included – at the same time that a determination of significantly excessive earnings is made. Instead, the Customer Group advocated that these topics should be deferred to a subsequent phase of the utility's individual SEET proceeding:

> [W]e believe that after a Commission finding of significantly excessive earnings, the parties should endeavor to stipulate the mechanism the Commission should employ to return the amount of the excess to consumers. In the absence of such stipulation, then the Commission should determine the mechanism to be utilized after parties are provided a fair opportunity to present their positions to the Commission. SEET refunds raise many questions that are generally better left to the particular circumstances of any given case. For example:
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> * * *
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> 3) Should there be interest on the unamortized SEET refund balance and if so, at what level?
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> * * *

The August 4, 2010 Application for Rehearing of the July 14, 2010 Entry

The Commission's July 14th Entry extended the date by when electric utilities operating under approved ESPs, including CSP and OP, must file information and testimony pertinent to the review of their 2009 earned returns on equity under the SEET from July 15, 2010 until September 1, 2010. The Customer Group's August 14th application for rehearing contends that the July 14th Entry was unjust and unreasonable in two respects.

In its first rehearing issue the Customer Group contends that the Commission erred by extending the date by which the utilities must make their filing for the 2009 SEET review. This criticism is without merit. But the General Assembly has conveyed substantial discretion and broad authority to the Commission regarding the conduct of its hearings and proceedings through enactment of R.C. 4901.13, as has been recognized by the Supreme Court. *Weiss v. Pub. Util. Comm.* (2000), 90 Ohio St. 3d 15, 19, 2000 Ohio 5, 734 N.E.2d 775; *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.* (2007), 113 Ohio St. 3d 180, 191. There is no statutorily mandated schedule for conducting the SEET reviews that §4928.143(F) requires. Consequently, it was within the Commission's discretion to extend the date for the initial electric utility filings for the 2009 SEET review. Moreover, the basis for doing so, to allow time to consider the issues raised in the various applications for rehearing of the June 30th Finding and Order, and, thus, to provide greater certainty regarding what must be included in the filing, is neither irrational nor an abuse of the Commission's discretion. Rather, it was a reasonable basis for extending the due date for the SEET filings until September 1.

The Customer Group's second rehearing issue asserts that the Commission erred by not ordering, in that July 14th Entry, that any SEET-related refunds to customers for 2009 will include interest and that such interest should accrue beginning January 1, 2011. This argument

also is unpersuasive, and the assignment of error should be rejected. First, it was not an issue raised by the movant for the extension of the filing due date, nor was it raised by any party in a memorandum contra the motion for extension. Accordingly, the issue was never presented to the Commission in connection with the motion, and so there was no basis for the Commission to address the issue in its July 14th Entry. Second, this argument is also unpersuasive for the same reasons provided above, in AEP Ohio's response to the Customer Group's similar contention in its application for rehearing of the June 30th Finding and Order. The issue may be raised and addressed in the utilities' individual SEET proceedings. Moreover, even the Customer Group advocated that approach in its initial comments in this proceeding.

Conclusion

For the reasons provided above the Customer Group's applications for rehearing of the June 30th Finding and Order and the July 14th Entry should be denied.

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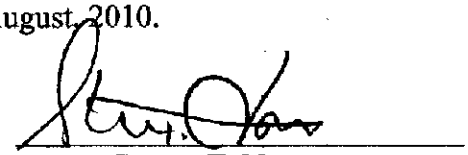
CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra the Customer Groups July 30, 2010 and August 4, 2010 Applications for Rehearing were served by First-Class U.S. Mail, postage prepaid, upon the counsel for interested parties listed below, this 9th day of August, 2010.



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