

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.

Strategic alliance with MWE China Law Offices (Shanghai)

RECEIVED-DOCKETING DIV

2008 SEP -9 PM 4: 59

FILE

PUCO
FACSIMILE

Date: September 9, 2008

Time Sent:

To:	Company:	Facsimile No:	Telephone No:
	Public Utilities Commission Ohio	614-466-0313	614-466-4095
From:	Douglas M. Mancino	Direct Phone:	+1 310 551 9323
E-Mail:	dmancino@mwe.com	Direct Fax:	+1 310 277 4730
Sent By:	Michele Johnson	Direct Phone:	202-756-8237
Client/Matter/Tkpr:	009900-0011-09340	Original to Follow by Mail:	Yes
		Number of Pages, Including Cover:	19

Re: Case Nos. 08-917-EL-SSO & 08-918-EL-SSO [AEP]

Message:

Attached are the below listed documents in the above-referenced cases:

1. Cover Letter
2. Motion to Leave to File Out of Time
3. Motion to Intervene and Memorandum in Support of the Commercial Group
4. Motion for Pro Hac Vice for Grace Wung

FAX

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original message to us at the below address by mail. Thank you.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL MICHELE JOHNSON AT 202-756-8237 AS SOON AS POSSIBLE.

Main Facsimile: +1 202 756 8087 Facsimile Operator: +1 202 756 8080

U.S. practice conducted through McDermott Will & Emery LLP.
600 Thirteenth Street, N.W. Washington, D.C. 20005-3096

Telephone: +1 202 756 8000

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician BJM Date Processed 9/10/08

McDermott Will&Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Douglas M. Mancino
Attorney at Law
dmancino@mwe.com
+1 310 551 9323

September 9, 2008

VIA FEDERAL EXPRESS AND FACSIMILE

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

Re: Case Nos. 08-917-EL-SSO and 08-918-EL-SSO

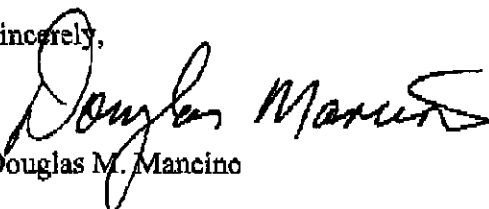
Dear Sir or Madam:

Pursuant to the order issued by the Attorney Examiner on September 5, 2008, enclosed for filing please find an original and 20 copies of the Motion to Leave to File Out of Time, Motion to Intervene and Memorandum In Support of the Commercial Group and the Motion for Pro Hac Vice for Grace Wung in the above-referenced cases.

Also enclosed is one extra copy of each document to be dated-stamped and returned to me in the enclosed, self-addressed Federal Express envelope. Please do not hesitate to contact me at the number above if you have any questions.

Thank you for your assistance in this matter

Sincerely,



Douglas M. Mancino

DMM/maj
Enclosures

BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Columbus Southern Power Company for)	
Approval of its Electric Security Plan; an)	Case No. 08-917-EL-SSO
Amendment to its Corporate Separation Plan;)	
And the Sale or Transfer of Certain Generating)	
Assets)	

In the Matter of the Application of Ohio Power)	
Company for Approval of its Electric Security)	Case No. 08-918-EL-SSO
Plan; and an Amendment to its Corporate)	
Separation Plan)	

**MOTION FOR LEAVE TO FILE OUT OF TIME,
MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT OF
THE "COMMERCIAL GROUP"**

Douglas M. Mancino (0005355)
 McDermott Will & Emery LLP
 2049 Century Park East
 Suite 3800
 Los Angeles, CA 90067-3218
 Telephone: (310) 551-9323
 Fax: (310) 277-4730
 dmancino@mwe.com

Grace C. Wung
 McDermott Will & Emery, LLP
 600 Thirteenth Street, N.W.
 Washington, DC 20005
 Telephone: (202) 756-8160
 Fax: (202) 756-8087
 gwung@mwe.com

**Attorneys for the Wal-Mart Stores East LP,
 Sam's Club East, and Macy's Inc.
 (collectively, the "Commercial Group")**

BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Columbus Southern Power Company for)	
Approval of its Electric Security Plan; an)	Case No. 08-917-EL-SSO
Amendment to its Corporate Separation Plan;)	
And the Sale or Transfer of Certain Generating)	
Assets)	

In the Matter of the Application of Ohio Power)	
Company for Approval of its Electric Security)	Case No. 08-918-EL-SSO
Plan; and an Amendment to its Corporate)	
Separation Plan)	

**MOTION FOR LEAVE TO FILE OUT OF TIME AND
MOTION TO INTERVENE OF THE "COMMERCIAL GROUP"**

Now comes Wal-Mart Stores East, LP ("Wal-Mart") and Sam's East, Inc. ("Sam's East"), and Macy's Inc. ("Macy's") (collectively, the "Commercial Group") and hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, for leave to intervene in the above-captioned matters with the full powers and rights granted by the Commission, specifically by statute or by the provisions of the Ohio Administrative Code, to intervening parties. Further, pursuant to the attorney examiner's September 5, 2008 order extending the procedural schedule and directing parties that submitting filings via the Commission's e-filing system to refile pursuant to Rule 4901-1-02, Ohio Administrative Code, the Commercial Group respectfully requests that the Commission accept this Motion for Leave to File Out of Time and Motion to Intervene of the Commercial Group.¹

¹ The Commercial Group notes that on September 4, 2008, it submitted a Motion to Intervene and Memorandum in Support of the "Commercial Group" via the Commission's e-filing system. However, the Commercial Group's e-filing was submitted shortly after the 5:30 pm cut off. Therefore, in this instant filing, the Commercial Group respectfully requests that its Motion to Intervene be accepted out of time. Additionally, in its e-filed intervention, the Commercial Group noted that as of date of its e-filing Wal-Mart and Sam's East were the only entities in the

(continued...)

On May 1, 2008, Governor Ted Strickland signed into law Amended Substitute Senate Bill ("SB 221"). SB 221 modified, among other things, Chapter 4928 of the Revised Code. Section 4928.141, Revised Code, requires each electric distribution utility ("EDU") to establish a standard service offer ("SSO") in accordance with Sections 4928.142 or 4928.143, Revised Code.²

On Thursday, July 31, 2008, Columbus Southern Power Company and Ohio Power Company (collectively, "American Electric Power" or "AEP") filed an Application for approval of an SSO under Section 4928.143, Revised Code.

As demonstrated further in the Memorandum in Support attached hereto and incorporated herein, the Commercial Group has a direct, real and substantial interest in the issues and matters involved in the above-captioned proceedings, and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest. The Commercial Group believes that its participation will not unduly prolong or delay these proceedings and that it will significantly contribute to the full development and equitable resolution of the factual and other issues in these proceedings. Further, the Commercial Group will accept the record as it stands. The interests of the Commercial Group will not be adequately represented by other parties to the proceedings and, as such, the Commercial Group is entitled to intervene with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the Ohio Administrative Code, to intervening parties. Further, at this juncture, given the extension in the procedural schedule granted by the attorney examiner on September 5, 2008, the scope of the issues to be addressed in AEP's application, the substantial

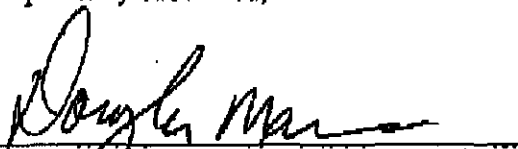
Commercial Group, but that additional commercial customers were anticipated to join the group. In this instant motion, the Commercial Group now includes Wal-Mart, Sam's East, and Macy's, but still anticipates that additional commercial customers may join the commercial group before the end of this week. The Commercial Group will make the appropriate filings to reflect additional commercial customers that join the group.

² Section 4928.142, Revised Code, governs market rate option ("MRO") plans while Section 4928.143, Revised Code, controls electric security plans ("ESP").

interest of the Commercial Group in these proceedings and the consolidation of such interests through group representation, as well as the reasons provided in the Memorandum in Support, extraordinary circumstances exist that warrant granting the Commercial Group's intervention.

By separate motion, a request for admission *Pro Hac Vice* for Grace C. Wung, of the firm of McDermott Will & Emery, LLP, has been filed in the above captioned proceeding. The Commercial Group asks that if approved, she be added to the official service list. Additional contact information for the additional counsel and representatives are provided in the attached Memorandum in Support.

Respectfully submitted,



Douglas M. Mancino (0005355)
McDermott Will & Emery LLP
2049 Century Park East
Suite 3800
Los Angeles, CA 90067-3218
Telephone: (310) 551-9323
Fax: (310) 277-4730
dmancino@mwe.com

Grace C. Wung
McDermott Will & Emery, LLP
600 Thirteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 756-8160
Fax: (202) 756-8087
gwung@mwe.com

**Attorneys for the Wal-Mart Stores East LP,
Sam's Club East, and Macy's Inc.
(collectively, the "Commercial Group")**

BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Columbus Southern Power Company for)	
Approval of its Electric Security Plan; an)	Case No. 08-917-EL-SSO
Amendment to its Corporate Separation Plan;)	
And the Sale or Transfer of Certain Generating)	
Assets)	

In the Matter of the Application of Ohio Power)	
Company for Approval of its Electric Security)	Case No. 08-918-EL-SSO
Plan; and an Amendment to its Corporate)	
Separation Plan)	

**MEMORANDUM IN SUPPORT OF THE "COMMERCIAL GROUP'S" MOTION FOR
LEAVE TO FILE OUT OF TIME AND MOTION TO INTERVENE**

Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention in the above-styled proceeding as a full party of record. In examining whether a party should be permitted to intervene in a proceeding, the Public Utilities Commission of Ohio ("Commission") considers, among other factors, the direct interests of the party, whether the intervention by the prospective party will unduly prolong or delay the proceedings, whether the party will significantly contribute to the full development and equitable resolution of the factual issues, and in the case of untimely motions to intervene, the extraordinary circumstances that warrant late intervention.³ A review of these factors in light of following facts supports granting the Commercial Group's intervention.

In support of this Motion to Intervene, the Commercial Group states that each entity in the Commercial Group is an ultimate customer of AEP. Further, the entities that comprise the

³ See also R.C. 4903.221(B) upon which the above rule is authorized.

Commercial Group each purchase substantial amounts of electric and related services from AEP, which is a public utility subject to the jurisdiction of the Commission.

Wal-Mart, Sam's East, and Macy's, are each served by AEP and may be affected by AEP's proposed ESP. The Commercial Group has a real and substantial interest inasmuch as these proceedings may directly or indirectly impact the provision of electric service to the Commercial Group. Specifically, the Commercial Group's direct interest in these proceedings is the result of the effect that these proceedings shall have upon the price, adequacy, and reliability of the electric supply and related services within Ohio, including the areas presently served by AEP.

Additionally, as the Commercial Group consists of more than one commercial customer served by AEP, the collective representation of the Commercial Group's interest will significantly contribute to the full and expeditious development of an equitable resolution of the factual issues in this proceeding. The Commercial Group has also formed to consolidate their substantially similar interests, and to consolidate their examination of witnesses and presentation of testimony. The instant motion is being filed no later than five days after the specific deadline set forth in this proceeding and therefore no harm or prejudice will occur if the Commercial Group's intervention is granted at this time. Extraordinary circumstances exist to grant the Commercial Group's motion to intervene, because additional time was needed to form the Commercial Group.⁴ Further, in light of the extension in the procedural schedule issued on September 5, 2008 (and directing parties who e-filed in this proceeding to refile before September 12, 2008), good cause exists to warrant the Commercial Group's intervention at this time.

⁴ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC, 2004 Ohio PUC LEXIS 358 (June 1, 2004) at paragraphs 7-8 (where the Commission granted the a late-filed motion to intervene nearly one month after the intervention deadline recognizing that the intervenor had numerous members that required additional time to determine whether the proposal could have a disruptive impact on their interests).

WHEREFORE, for the foregoing reasons, the Commercial Group respectfully requests that the Commission grant this motion for leave to intervene and that they be made a full party of record. For purposes of receiving service in the proceeding, in addition to the undersigned, the Commercial Group requests that the following persons be place on the official service list:

Grace C. Wung
McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, DC 20005
Tel: (202) 756-8160
Fax: (202) 756-8087
gwung@mwe.com

Tim Leigh
Macy's Inc.
5985 State Bridge Road
Duluth, GA 30097
Tel: (678) 474-3214
Fax: (474)-3313
Tim.leigh@macys.com

Steve W. Chriss
Manager, State Rate Proceedings
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0550
Tel: (479) 204-1594
Fax: (479) 273-6851
Stephen.chriss@wal-mart.com

Respectfully submitted,




Douglas M. Mancino (0005355)
McDermott Will & Emery LLP
2049 Century Park East
Suite 3800
Los Angeles, CA 90067-3218
Telephone: (310) 551-9323
Fax: (310) 277-4730
dmancino@mwe.com

Grace C. Wung
McDermott Will & Emery, LLP
600 Thirteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 756-8160
Fax: (202) 756-8087
gwung@mwe.com

Attorneys for the Wal-Mart Stores East LP,
Sam's Club East, and Macy's Inc.
(collectively, the "Commercial Group")

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support of the Commercial Group was served upon the following parties of record this 9th day of September, 2008, via first class mail, postage prepaid.


Douglas Mancino

FirstEnergy List: 08-917-EL-SSO

Howard Petricoff Stephen M. Howard M. Petricoff Vorys, Sater, Seymour and Pease LLP 52 East Gay Street Columbus, OH 43215	David Boehm, Esq. Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, OH 45202-4454
Brett E. Breitschwerdt Teresa Orahoad Bricker & Eckler LLP 100 South Third Street Columbus, OH 43215	Jacqueline Roberts, Esq. Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, OH 43215
Kevin Schmidt 33 North High Street Columbus, OH 43215	John Orr VP Regulatory Affairs Constellation Energy Commodities Group, Inc. 111 Market Place, 5th Floor Baltimore, MD 21202
Nolan Moser The Ohio Environmental Council 1207 Grandview Avenue, Suite 201 Columbus, OH 43212	Langdon D. Bell Barth E. Royer Bell & Royer Co., LPA 33 South Grant Avenue Columbus, OH 43215
Cynthia A. Fonner David I. Fein Constellation Energy Group, Inc. 550 W. Washington Street, Suite 300 Chicago, IL 60661	Eric Stephens 5400 Frantz Road Suite 250 Dublin, OH 43016
Lisa McAlister Daniel J. Neilsen, Esq. Samuel C. Randazzo, General Counsel Joseph M. Clark McNees, Wallace & Nurick 21 East State Street, 17th Floor Columbus, OH 43215-4228	Gary A. Jeffries 501 Martindale Street Suite 400 Pittsburgh, PA 15212-5817

Bobby Singh 300 West Wilson Bridge Road Suite 350 Worthington, OH 43085	Mark S. Yurick, Esq. John Bentine, Esq. Matthew S. White, Esq. Chester Wilcox & Saxbe LLP 65 East State Street Suite 1000 Columbus, OH 43215
Denis George 1014 Vine Street, G-07 Cincinnati, OH 45202-1100	Craig G. Goodman National Energy Marketers Association 3333 K Street, NW, Suite 110 Washington, DC 20007
Henry Eckhart, Esq. 50 West Broad Street, Suite 2117 Columbus, OH 43215-3301	Michael R. Smalz Ohio State Legal Service Association 555 Buttlers Avenue Columbus, OH 43215
Garrett A. Stone, Esq. Michael K. Lavanga, Esq. Brickfield, Burchette, Ritts & Stone, P.C. 1025 Thomas Jefferson Street, NW 8th Floor, West Tower Washington, DC 20007	Jeffrey Small Michael E. Idzkowski Maureen Grady Terry Etter Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, OH 43215-3485
Dale Arnold Director, Energy Services Ohio Farm Bureau Federation, Inc. P.O. Box 182383 Columbus, OH 43218	Larry Gearhardt Ohio Farm Bureau Federation, Inc. 280 N. High Street P.O. Box 479 Columbus, OH 43216
Richard L. Sites 155 E. Broad Street 15th Floor Columbus, OH 43215-3620	David C. Rinebolt Ohio Partners for Affordable Energy 231 W. Lima Street Findlay, OH 45839-1793
Ohio Manufacturers Association 33 N. High Street Columbus, OH 43215	Natural Resources Defense Council 101 N Wacker Drive, Suite 609 Chicago, IL 60606

Selwyn J. R. Dias 88 E. Broad Street Suite 800 Columbus, OH 43215	Marvin Resnik American Electric Power Serv. Corporation 1 Riverside Plaza, 29th Floor Columbus, OH 43215
Daniel Conway Porter Wright Morris & Arthur LLP 41 South High Street Columbus, OH 43215	Steven T. Nourse Senior Counsel American Electric Power Company 1 Riverside Plaza Columbus, OH 43215
Scott Debroff, Esq. Stephen J. Romeo, Esq. Smigel, Anderson & Sacks River Chase Center 4331 North Front Street Harrisburg, PA 17110	Emma F. Hand, Esq. Ethan E. Rll, Esq. Presley R. Reed, Esq. Clinton A. Vince, Esq. Sonnenschein Nath & Rosenthal 1301 K Street, NW Suite 600, East Tower Washington, DC 20005
Benjamin Edwards, Esq. Attorney at Law One East Livingston Avenue Columbus, OH 43215	American Wind Energy Association 1101 14th Street, NW, 12th Floor Washington, DC 20005
Consumer Powerline 17 State Street, 19th Floor New York, NY 10004	Michael S. Adcock Ormet Primary Aluminum Corp. P.O. Box 176 Hannibal, OH 43931
Wind on the Wires 1619 Dayton Avenue, Suite 203 Saint Paul, MN 55104	