

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus Southern Power Company for Approval of its Peak Demand Reduction Program Portfolio Plan and Request for Waiver and Request for Amendment of the 2009 Peak Demand Reduction Benchmark Pursuant to Section 4928.66(A)(2)(b) of the Ohio Revised Code.

Case No. 09-578-EL-EEC

In the Matter of the Application of Ohio Power Company for Approval of its Peak Demand Reduction Program Portfolio Plan and Request for Waiver and Request for Amendment of the 2009 Peak Demand Reduction Benchmark Pursuant to Section 4928.66(A)(2)(b) of the Ohio Revised Code.

Case No. 09-579-EL-EEC

**REPLY TO AEP'S MEMORANDUM IN OPPOSITION
BY
THE OHIO ENVIRONMENTAL COUNCIL**

On July 9, 2009, the Columbus Southern Power Company and the Ohio Power Company (collectively "AEP") submitted an application essentially requesting that the Commission waive peak demand reduction benchmarks under R.C. 4928.66(A)(1)(b) for 2009. On August 17, 2009, The Ohio Environmental Council ("OEC"), the state's largest non-profit conservation advocacy organization, filed a motion requesting intervention in the case and commenting on AEP's application. On August 24, 2009, AEP filed a memorandum in opposition to OEC's motion to intervene. Throughout its memorandum in opposition, AEP uses such phrases as the "OCC/OEC argument" or the "OCC/OEC interpretation," which falsely implies that OEC's

arguments were identical to those advanced by OCC. AEP also conflates OEC's and OCC's arguments as a "get-r-done" interpretation of the peak demand reduction benchmarks established by S.B. 221.¹

The purpose of this Reply is to clarify OEC's position.

OEC believes that R.C. 4928.66(A)(1)(b) is clear in its requirements that electric distribution utilities "shall implement peak demand reduction programs" designed to achieve peak demand reductions in 2009. But as AEP points out, OEC does not "dispute the Commission's ability to amend the 2009 peak demand reduction benchmarks under the statutory authority invoked by AEP Ohio in the application, §4928.66(A)(2)(b), Ohio Rev. Code."² The Commission clearly has the authority to amend these benchmarks if a utility "cannot reasonably achieve the benchmarks" for 2009, pursuant to R.C. 4928.66(A)(2)(b).

However, the appropriate time for a utility to claim that it was not reasonably able to achieve the benchmarks for 2009 is *after* a utility determines that it was not reasonably able to achieve the benchmarks for 2009, not before. AEP, in effect, is making a premature claim of hardship without first showing that compliance for 2009 is not possible. AEP will have the opportunity to explain to the Commission why compliance was not possible for 2009 after compliance has not been achieved. This could be done in a penalty or non-compliance review proceeding in which AEP could explain why economic or other factors made compliance with the 2009 benchmarks unreasonable.

If AEP later determines that it was not reasonably able to comply with the benchmarks, at that point the Commission could consider a request to amend or waive the benchmarks for 2009.

¹ AEP Memorandum at 6.

² AEP Memorandum at 4.

OEC requests that the Commission deny AEP's present request to avoid the peak demand reduction benchmarks for 2009.

Respectfully Submitted,

s/Will Reisinger

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 28th day of August, 2009.

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Summary: Memorandum electronically filed by Mr. Will Reisinger on behalf of Ohio Environmental Council