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

OHIO PARTNERS FOR AFFORDABLE ENERGY'S REPLY COMMENTS

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully replies to the comments filed in the above-captioned matter by American Electric Power Ohio ("AEP Ohio") and other commenters. OPAE files these reply comments in accordance with the Entry issued December 23, 2009 by the Public Utilities Commission of Ohio ("Commission").

AEP Ohio claims that it would be unlawful to treat earnings that result from wholesale transactions as significantly excessive. AEP Ohio's argument is based partly on an extremely narrow reading of Revised Code 4928.143(F) that provides that earnings resulting from adjustments included in the electric distribution utility's ("EDU") electric security plan ("ESP") are subject to the significantly excessive earnings test ("SEET") and that off-system sales revenues are not an adjustment to the EDUs' ESP. AEP Ohio also argues that off-system sales result from wholesale transactions whose rates are authorized by the Federal Energy Regulatory Commission ("FERC"). AEP Ohio claims that ordering earnings that result from FERC jurisdictional wholesale rates to be returned to retail customers would be unlawful because the state is preempted from interfering with the EDU's ability to realize revenues received from wholesale power sales pursuant to rates approved by FERC. AEP Ohio Comments at 2-3.

The Staff recommended that profits from off-system sales be included in the net earnings used to calculate return on equity for the SEET. The Staff found no basis for eliminating revenues that are normally recurring. Off-system sales are routine operating items and not non-recurring items. Therefore, the Staff found that no adjustments to off-system sales were appropriate for the calculation of the return on equity for the SEET. It is the Ohio Commission that determines the adjustments or lack of adjustments to be made for determination of the SEET. FERC has no role to play in this SEET calculation.

The SEET compares the earned return on common equity of the EDU with the return on common equity that was earned during the same period by comparable publicly traded companies. R.C. 4928.143(F). Since the return on common equity that was earned by an EDU that owns generation would include profits from off-system sales, the Commission cannot ignore such profits for an Ohio EDU without creating an asymmetry with the earnings of other EDUs in the comparable group. Moreover, because the power plants used to make off-system sales are included in the utility's capitalization, all revenues produced by these customer-funded assets are properly included in the SEET. If plant has been constructed for the benefit of jurisdictional customers and was ultimately paid for by those customers, it is fair that the revenues realized from the plant should be included in the SEET calculation. Even though the plants are no longer regulated on a cost-of-service basis, Ohio customers are still paying all the costs associated with those plants, including environmental upgrades and other investments. Arguing for the exclusion of profits for assets that ratepayers pay for is simply disingenuous.

AEP Ohio also comments that the SEET should be performed on Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP"), the two AEP Ohio affiliates, on a combined basis. AEP Ohio claims that these two EDU's are vertically integrated utilities and are operated as a single entity with a single management structure. AEP Ohio also claims that performing the SEET on a separate company basis assumes that investment and spending are determined on a stand-alone company basis and that separate company determinations could punish one of the affiliates for management's focus on efficient investment on a combined-company basis. At the same time, AEP Ohio acknowledges that CSP and OP have different rate structures.

The Staff's position is that the SEET should be calculated for the single entity, the EDU. Each EDU, CSP and OP separately, should be considered on a stand-alone basis. As the Staff noted, SB 221 mandates this result. According to Revised Code 4928.143(F), in making the determination of significantly excessive earnings, the Commission shall not consider, directly or indirectly, the revenues, expenses, or earnings of any affiliate or parent company. Therefore, SB 221 mandates that the SEET be performed for the EDU on a stand-alone basis. OPAE agrees with the Staff that the SEET must be considered for each EDU on a stand-alone basis.

OPAE also notes at this time its agreement with the Joint Comments of the Office of the Consumers' Counsel, the Ohio Energy Group ("OEG"), the Ohio Manufacturers Association, and the Ohio Hospital Association ("Customer Parties") regarding the EDU's discretion to propose the group of companies it believes are comparable to it and the use of the mean return of the self-selected comparable group plus a statistical standard deviation. The Staff would allow the EDU to earn a rate of return on equity which is the greater of the mean return of its self-selected comparable group plus 200 basis points or the mean return of its self-selected comparable group plus the standard deviation of that group multiplied by 1.28. By adopting a statistical standard deviation approach and then allowing the utility to self-select its comparable group, the Staff is undermining the consumer protection that the SEET is supposed to represent. As the Customer Parties state, the Staff's methodology is fundamentally unworkable and unrealistic and should not be accepted. The Staff's approach will make the SEET a safe haven for windfall utility profits rather than the consumer protection that the SEET is supposed to represent.

The Staff's original position was that a single methodology should be adopted across all EDU's for the selection of the comparable companies in an annual earnings test. The Staff's revised position is that the comparable group be determined on a case-by-case basis. OPAE agrees with the Customer Parties that the Staff's original position should be adopted. The selection of the comparable group requires a common methodology for all Ohio EDUs. If the comparable groups are decided on a case-by-case basis by each EDU with complete discretion to propose the group of companies that it believes are comparable to it, then the fundamental consumer protection of the SEET is undermined. The selection of the comparable group will determine the mean rate of return on equity. Obviously the utilities will have every incentive to select a high-earning comparison group. The comparable group also determines the variability of earnings from which the statistical standard deviation is derived. The standard deviation of the comparable company ROEs could be greatly inflated by outliers. Unreasonable results will occur if a statistical standard deviation approach is used and the utilities are in charge of the selection of the comparable group.

The Staff's original approach of establishing the SEET threshold at 200-400 basis points above the mean return of the same group was far superior to the "greater of" statistical approach under the Staff's more recent methodology. However, the method proposed by OEG witness King that the SEET threshold should be set at a simple 200 basis points above the mean return of the comparable group is superior to either Staff methodology. OPAE agrees with the Customer Parties that 200 basis points provide the utilities with an ample Return on Equity premium. Moreover, the comparable group should be determined by a distinct methodology for all EDU's and not on a case-by-case basis.

Respectfully submitted,

Colleen L. Mooney DCR

Colleen L. Mooney (0015668)
David C. Rinebolt
Ohio Partners for Affordable Energy
1431 Mulford Road
Columbus, Ohio 43212
(614) 488-5739 – Telephone
(419) 425-8862 – Facsimile
cmooney2@columbus.rr.com
drinebolt@aol.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served by regular U.S. Mail upon the parties of record identified below in this case on this 11th day of January 2010.

David C. Rinebolt

SERVICE LIST

Duane W. Luckey
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291

Ohio Hospital Association
Richard L. Sites
155 E. Broad Street, 15th Floor
Columbus, Ohio 43215-3620

Judi L. Sobecki
Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432

Marvin I. Resnik
American Electric Power S.C.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215

Michael Kurtz
Ohio Energy Group
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Michael Idzikowski
Office of the Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Theodore Robinson
Citizen Power
2121 Murray Avenue, 3rd Floor
Pittsburgh, PA 15217

Arthur Korkosz
FirstEnergy
76 S. Main Street
Akron, Ohio 44308

Elizabeth Watts
Duke Energy Ohio Inc.
139 E. Fourth Street, 25 Atrium II
P.O. Box 960
Cincinnati, Ohio 45202-0960