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PUCO

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus )  
Southern Power Company to Update Its ) Case No. 10-164-EL-RDR  
gridSMART Rider. )

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MOTION TO INTERVENE  
AND  
MOTION FOR A PROCEDURAL RULING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in this case where Columbus Southern Power Company ("CSP" or "Company") is proposing a rider as a prelude to asking that consumers pay \$7,529,985 in gridSMART expenses.<sup>1</sup> OCC also moves for a procedural ruling that includes provision for protests and a hearing on disputed matters.<sup>2</sup>

The reasons for granting OCC's motions are further set forth in the attached Memorandum in Support.

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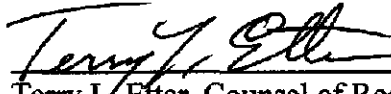
<sup>1</sup> R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> Ohio Adm. Code 4901-1-12.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Terry L. Etter", is written over a horizontal line.

Terry L. Etter, Counsel of Record  
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In the Matter of the Application of Columbus	)	
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**MEMORANDUM IN SUPPORT**

**I. INTRODUCTION**

On February 11, 2010, CSP filed an application (“Application”) regarding its rider for collecting costs associated with its gridSMART energy efficiency program. CSP attached exhibits to the Application describing the gridSMART program and providing alleged calculations of an updated revenue requirement concerning the program. Based on these calculations, the Company is asking the PUCO to approve a new rate of 2.30342% for the collection of gridSMART Phase I investment from customers,<sup>3</sup> revised downward from the 3.45344% CSP has tariffed as a result of its electric security plan (“ESP”) case.<sup>4</sup> The results from the establishment of the new riders could adversely affect CSP’s approximately 665,000 residential distribution customers who pay for electric service. The Commission should grant OCC’s Motion to Intervene in these proceedings so that OCC can fully participate in this proceeding and protect the interests of residential customers.

**II. INTERVENTION SHOULD BE GRANTED.**

OCC moves to intervene in the above-captioned docket under its legislative authority, pursuant to R.C. Chapter 4911, to represent the interests of the more than 665,000 residential

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<sup>3</sup> Application at 5.

<sup>4</sup> See CSP Tariff P.U.C.O. No. 7, Original Sheet 84-1.

customers of CSP. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. Residential customers would be subject to CSP’s proposed gridSMART rider if it is approved by the Commission, and thus residential customers must be able to ensure the accuracy of the Company’s revised revenue requirements in order to avoid overpayment of the gridSMART rider. The interests of residential electric customers in Ohio are therefore “adversely affected” by these cases. Thus, this element of the intervention standard stated in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest lies in CSP’s proposal to revise the amount in the gridSMART rider that would be paid by residential customers. It is essential that the interest of residential customers be represented inasmuch as the Company’s plans would directly affect the rates paid by residential customers.

Second, the OCC’s advocacy for residential consumers will include advancing the position that electric rates should be no more than what is reasonable and permissible under Ohio law for service that is adequate under Ohio law. This advocacy includes advancing the position

that the determination of rates should not proceed without the possibility of a hearing. OCC opposes CSP's approach to this case that would rule out such a hearing.<sup>5</sup>

Third, OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the Commission's effective treatment of this proceeding. OCC will significantly contribute to the full development and equitable resolution of the issues in this case, based on its expertise in regulatory and energy matters.

Fourth, OCC will significantly contribute to the full development and equitable resolution of the factual issues. OCC has a demonstrated history of concern regarding matters stemming from CSP's Application that are tied to CSP's electric security plan case, Case Nos. 08-917-EL-SSO, in which the OCC actively participated. The Commission should grant OCC's Motion to Intervene that will permit the full participation of the OCC in an evaluation of CSP's proposed rider.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, the OCC has a real and substantial interest in these cases where the generation rates paid by residential customers are under review by the Commission.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC has already addressed, and that OCC satisfies.

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<sup>5</sup> Application at 5, ¶12 ("CSP does not believe that a hearing in this matter is required or needed").

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion because OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.<sup>6</sup> That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio has confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.<sup>7</sup>

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio’s residential consumers, the Commission should grant OCC’s Motion to Intervene.

### **III. A PROCEDURAL ORDER SHOULD BE ISSUED.**

The PUCO should issue an entry that provides parties with expedited response times (with electronic service required) for discovery that is OCC’s right under law to conduct, an opportunity to state their protests and identify issues, and an opportunity to ultimately address any outstanding dispute in a hearing. In contrast to this normal framework for setting rates, CSP proposes that the PUCO Staff review the Company’s calculations and that “an opportunity for the filing of comments and reply comments” should be provided to interested parties.<sup>8</sup> The

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<sup>6</sup> R.C. Chapter 4911.

<sup>7</sup> *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

<sup>8</sup> Application at 5, ¶12.

Company's procedural proposal is designed to limit the participation of interested parties, and should be rejected.

CSP's procedural proposal does not directly address the matter of discovery. The discovery opportunity required by R.C. 4903.082 (which requires that "intervenors shall be granted ample rights of discovery") should be expeditious so that the Commission may determine rates by the July 2010 time frame discussed by the Company.<sup>9</sup> Discovery should be conducted with ten-day turn-around. The Commission should require service of all discovery requests and responses by e-mail. Service by e-mail is allowed but not required by Ohio Adm. Code 4901-1-5(C).

Ohio Adm. Code 4901-1-14 authorizes attorney examiners and others to enter procedural rulings such as what OCC requests here. Pursuant to Ohio Adm. Code 4901-1-27(B)(7)(d), examiners are authorized to "assure that the hearing proceeds in an orderly and expeditious manner," and this objective should be followed at this stage of the proceeding with ten-day turn-around and e-mail service for discovery. The PUCO has altered the manner of service for discovery in many previous cases.<sup>10</sup> The PUCO should do so again in this case where timeliness is important.

CSP proposes an opportunity "for the filing of comments and reply comments."<sup>11</sup> A schedule should be issued that permits interested parties the opportunity to protest those aspects of the Company's proposal that remain outstanding after completing discovery. A hearing should be provided to assist the Commission in resolving disputed matters. If no such protests

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<sup>9</sup> Id. at 6, ¶12.

<sup>10</sup> See, e.g., *In re AEP's Proposed IGCC Generating Facility*, Case No. 05-376-EL-UNC, Entry at ¶(10) (May 10, 2005) and *In re Prudence Review of DP&L's Billing System Modification Costs*, Case No. 05-792-EL-ATA, Entry at 4-5 (October 4, 2005).

<sup>11</sup> Application at 5, ¶12.

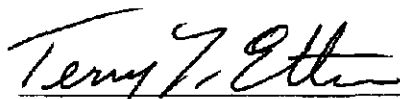
arise or if any protests are otherwise resolved before the date set for hearing, the hearing will likely not be necessary. The Commission should not decide this matter, as proposed by CSP, based merely on the Company's Application.

#### **IV. CONCLUSION**

The above-captioned case may adversely affect residential customers by establishing a rider that allows CSP to overcollect gridSMART costs from customers. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of the approximately 665,000 residential customers of CSP. The PUCO should also grant OCC's procedural motion, and order that discovery response times be expedited and an opportunity to protest be established regarding CSP's proposed rider. In the event that issues remain outstanding, a hearing should be held before setting new electric rates for CSP's customers.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



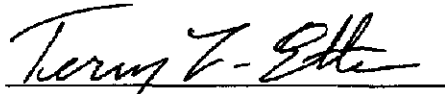
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Motion to Intervene was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of February 2010.



Terry L. Etter  
Assistant Consumers' Counsel

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