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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the 2009 Annual Filing of)
Columbus Southern Power Company and) Case No. 10-1261-EL-UNC
Ohio Power Company Required by Rule)
4901:1-35-10, Ohio Administrative Code.)

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
POST HEARING BRIEF**

Ohio Partners for Affordable Energy ("OPAE") hereby files its Post-Hearing brief in this proceeding concerning the Significantly Excessive Earnings Test ("SEET") made pursuant to Revised Code Section 4928.143(F) and Rule 4901:1-35-10, Ohio Administrative Code. In this proceeding, the Commission will consider the 2009 earnings of Columbus Southern Power Company ("CSP") to determine whether CSP had significantly excessive earnings in 2009 as a result of its approved electric security plan ("ESP"). The CSP earnings for the 2009 annual period, according to CSP's own calculations, resulted in a 20.84% return on common equity. CSP Ex. 4, TEM-1.

The Office of the Ohio Consumers' Counsel, the Ohio Manufacturers' Association, the Ohio Hospital Association, the Appalachian Peace and Justice Network, and the Ohio Energy Group (together "Joint Intervenor") filed the testimony of J. Randall Woolridge to recommend a return on common equity ("ROE") threshold to represent significantly excessive earnings for CSP. Dr. Woolridge first identified a peer group of electric utility companies and developed a list of business and financial risk measures for this electric utility group. He then identified a group of 45 comparable public companies whose business and financial risk indicators fell within the ranges of the electric utility group. He then computed a benchmark ROE of 9.45% for 2009 for the group of comparable public companies

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and adjusted the benchmark ROE for the capital structure of CSP. Tr. II at 314-317. The adjusted benchmark ROE for CSP was 9.48%. Finally, he added a ROE premium (200-400 basis points) to establish the SEET threshold ROE. Setting the SEET threshold at 200 basis points over returns of comparable companies is consistent with the Commission's adoption of a 200 basis point safe harbor for the SEET. The SEET threshold ROE for CSP is in the range of 11.48% (200 basis points above 9.48%) to 13.48% (400 basis points above 9.48%). Earnings above 11.48% or 13.48% should be considered significantly excessive. Tr. II at 314-317; Joint Intervenor's Ex. 1 at 23; Joint Intervenor's Ex. 1A at JRW-7.

Mr. Woolridge also criticized the methodology used by CSP's witness Makhija, who computed a benchmark ROE of 11.04% with a standard deviation of 5.85%, and a threshold ROE of 22.51%. CSP's approach unlawfully identifies comparable utility and public companies based on the business and financial risk profile of AEP, CSP's parent, and not CSP. Therefore, the CSP analysis results in companies comparable to AEP but not CSP. Under Ohio law, for purposes of the SEET, consideration is given to the earnings of CSP and not CSP's parent or other affiliates. CSP also did not adjust the benchmark ROE for the capital structure and cost of debt of CSP. Moreover, CSP's use of the standard deviation makes it sensitive to outliers which skew results so that very few electric utilities would have significantly excessive earnings. Therefore CSP's approach is both unlawful and skewed to produce an excessive ROE threshold. Joint Intervenor's Exhibit 1 at 23-26.

Staff witness Cahaan found that the reasonable benchmark ROE range was 10% to 11%. Because he believes that there was a "bit" more evidence for the higher side of the range, he recommended that 10.7% be used as the benchmark ROE for purposes of this SEET proceeding. Staff Ex. 1 at 13. As for what is

significantly excessive, Mr. Cahaan criticized CSP witness Makhija's approach. He noted that CSP's approach adds 11.47% to a comparable risk peer group of 11.04% to produce a threshold ROE of 22.51%. Under CSP's analysis, an ROE of 22.5% is not significantly excessive. On the other hand, subtracting 11.47% from the 11.04% mean results in a negative .43%. Such a negative ROE would clearly be considered significantly deficient. Staff Ex. 1 at 14. He believed that the threshold ROE should be expressed as a percentage of the benchmark ROE and the percentage should be a range of 50%. If the benchmark ROE is set at 10.7%, a 50% standard would add 535 basis points, for a threshold ROE of 16.05%, above which earnings are significantly excessive. Staff Exhibit 1 at 17.

The Joint Intervenors also filed the testimony of Lane Kollen who accepted Mr. Woolridge's SEET threshold recommendation (11.48% to 13.48%) and compared it to the common equity return earned by CSP in 2009 of 20.84%. The Customer Parties recommended a refund to CSP customers as high as \$155.906 million, the maximum amount allowed under the law. Because the SEET refund is limited under the law to the earnings resulting from the current ESP compared to what the earnings would have been under the prior rate plan, the SEET refund was limited to \$155.906 million. This amount consists of at least \$118.924 million in actual cash rate increases from the ESP plus another \$36.982 million in deferred rate increases from the ESP to recover fuel adjustment clause expenses.

Each 100 basis points over the SEET threshold is equivalent to a refund to ratepayers of \$20.039 million. The \$155.906 million is based on significantly excessive earnings threshold of 11.58% reflecting 200 basis points above the comparable group, or a refund of \$145.483 million based on significantly excessive earnings threshold of 13.58% reflecting 400 basis points above the comparable group. Joint Intervenors' Ex.2 at 17. Although Dr. Woolridge adjusted his

benchmark ROE from 9.55% to 9.45% to correct for certain data errors in his original prefiled testimony, the Joint Intervenors did not adjust their refund recommendation based on the benchmark ROE at 9.55%. Tr. II at 314. The change from a 9.55% benchmark ROE to a 9.45% benchmark ROE would have been an approximate increase in the range of the refund of \$2 million. Tr. II at 316. However, the Joint Intervenors are not proposing to adjust the original recommended refund range of \$145.5 million to \$155.9 million. Tr. II at 317.

The entirety of the ESP rate increases, both actual and deferred, contributed to CSP's earnings and the entirety of these amounts should be refunded to customers. In CSP's testimony, CSP chose to select components of its ESP rate increase, such as fuel deferrals, as ineligible for refund. CSP is wrong to suggest that deferrals are ineligible for refund because these components of the ESP rate increase increased CSP's earnings and therefore must be refunded. The deferrals should be reflected in the return on equity calculation for SEET in the year the deferrals are booked. The deferrals fall within the definition of "rate adjustments" and are recognized for book accounting purposes. (When deferrals are included in the earnings calculation, any excess earnings first should be used to eliminate or reduce the regulatory asset created by the deferral that is remaining on CSP's books at the effective date of the refunds.) Joint Intervenors' Ex. 2 at 16, 25-26.

The Commission must also reject CSP's proposal to exclude off-system sales in the SEET calculation. Off-system sales are an inherent component of CSP's earnings, just as the costs of the assets and expenses incurred to provide the capacity and energy for the off-system sales are an inherent component of CSP's earnings. In 2009, CSP's after-tax earnings from off-system sales were \$32.977 million, or 12.1% of CSP's total earnings. Excluding the earnings from off-system sales from the SEET would result in comparing only 87.9% of CSP's earnings to

100% of the earnings of the comparable companies. Joint Intervenor's Ex. 2 at 21-23. To exclude CSP's off-system sales would bias its earnings downward in comparison to the group of comparable companies used to determine the SEET earnings threshold.

Moreover, off-system sales are possible only because the costs associated with underlying generation assets and purchase power contracts are recovered from Ohio ratepayers. The fixed costs to make the sales are included in the calculation of earnings. Earnings are reduced for depreciation expense on all generating and transmission assets owned by CSP that are used to make off-system sales. Similarly, earnings are reduced because CSP has issued debt and common equity to finance the cost of generation and transmission owned by CSP that are used to make off-system sales. If these costs are included in the calculation of the SEET, then the earnings from off-system sales also should be included. Finally, CSP's consumers pay for energy efficiency programs that free up energy for off-system sales. It would be unreasonable to ignore off-system sales profits that customers directly facilitated. Joint Intervenor's Ex. 2 at 21-24.

The Commission should not allow CSP to retain all or a portion of the refunds that the statute requires be returned to consumers. There should be no payment of future construction costs with excess earnings or the creation of a regulatory liability for use in future proceedings. With regard to future committed capital investments, CSP's forecasted construction expenditures in 2010 and 2011 are below its actual level of construction expenditures in 2007-2008. Given the reduced level of capital expenditures and the fact that some of the capital expenditures are being recovered from ratepayers through riders, there should be no upward adjustment in the SEET or a reduction in refunds for capital expenditures. Joint intervenor's Ex. 2 at 29-30.

Nor should there be an increase in the SEET earnings threshold for shopping risk. At the end of 2009, none of CSP's residential or industrial customers were shopping for competitive generation and only a small amount, less than 2%, of commercial load had shopped. Moreover, CSP was more than adequately compensated for shopping risk through the receipt of \$89.9 million of Provider of Last Resort revenue in 2009. Joint Intervenor's Ex. 2 at 30.

The statute directs the Commission to return to consumers the amount of the significantly excessive earnings. Any decision that would allow CSP to retain all or a portion of the refunds would effectively return the amount of the excess to CSP, not consumers. CSP's earned return on equity of 20.84% was the highest by a significant margin for all affiliates in the AEP East power pool. The 2009 gross profit margin on sales to Ohio consumers by CSP and Ohio Power Company was \$57.6/mWh, or 57% higher than the gross profit margin earned on retail sales by the other AEP East utilities. In 2009, selling power to consumers in Ohio was by far the most profitable line of business for AEP. Joint Intervenor's Ex. 2 at 20.

In 2009, CSP had the highest earned return on equity of any of the 142 investor-owned regulated electric utilities in the United States that filed Form 1 reports with the Federal Energy Regulatory Commission. *Id.* The CSP earned return on equity for the 2009 annual period was more than double the weighted average of the earned returns for all the electric utilities in the SNL Financial data base. Joint Intervenor's Ex. 2 at 21.

Thus, the Commission should find as reasonable the Joint Intervenor's recommendation of a \$155.906 million refund to ratepayers based on the significantly excessive earnings threshold of 11.58% reflecting 200 basis points above the comparable group's 9.55% and adjusted for CSP's capital structure to 9.58% or, in the alternative at the top of the range a refund of \$145.483 million

based on significantly excessive earnings threshold of 13.58% reflecting 400 basis points above the comparable group and adjusted for CSP's capital structure. Joint Intervenor's Ex. 2 at 17. OPAE supports either of these refund alternatives and urges the Commission to adopt the refund recommended by the Joint Intervenor's. OPAE would also note that even under the conservative approach of Staff Witness Cahaan for a SEET threshold ROE for CSP of 16.05%, CSP's earned return on equity of 20.84% is significantly excessive.

Thus, there is no doubt that CSP had significantly excessive earnings for the 2009 annual period. The Commission should recognize the extraordinary significantly excessive earnings of CSP in 2009. The Commission should accept the Joint Intervenor's benchmark ROE of 9.45% for 2009 for the group of comparable public companies and the adjusted benchmark ROE for CSP of 9.48%. Adding a ROE premium (200 and 400 basis points) to establish the SEET threshold ROE for CSP makes a range of 11.48% to 13.48%. CSP's earned return on equity of 20.84% is clearly far outside the range and clearly significantly excessive.

In 2009, CSP had the highest earned return on equity of any of the 142 investor-owned regulated electric utilities in the United States that filed Form 1 reports with the Federal Energy Regulatory Commission. The CSP earned return on equity for the 2009 annual period was more than double the weighted average of the earned returns for all the electric utilities in the SNL Financial data base. Joint Intervenor's Ex. 2 at 21.

These significantly excessive earnings, allowed under the current ESP, must be returned to CSP's ratepayers in accordance with Ohio law. To follow the law, the Commission must make the refunds recommended by the Joint Intervenor's whose recommended refund, which OPAE supports, reflects a benchmark ROE of 9.55% adjusted for CSP to 9.58%. .

Respectfully submitted,

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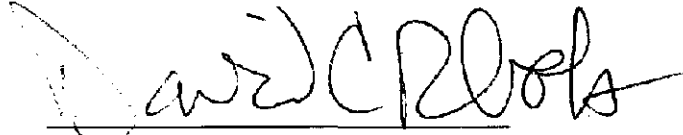
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post Hearing Brief was served electronically upon the following parties identified below in this case on this 19th day of November 2010.


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