



associated with debt financing are serviced through cash flow, not net income. For 2009, Joint Applicants' EBITDA/debt coverage was approximately 4.0 times. Joint Applicants note that their current equity is approximately \$20 million. Thus the requested long term financing will not result in an excessively leveraged capital structure. There is no basis for concern that the requested long term debt facility is disproportionately "large". The point is that OCC's concerns in this regard readily could have been satisfied through intervention granted after a timely motion.

Joint Applicants and the Commission Staff have engaged in extensive discussions and negotiations since the Joint Application was filed on October 8, 2010, more than three and a half months prior to the filing of the OCC Motion. These discussions have produced a basis for consensus that may avoid the expense and delay of a contested hearing. To permit the Office of Consumers' Counsel to intervene at this late date without excuse or explanation of the reason for the delay is highly prejudicial to Joint Applicants, whose need for the requested long term financing is immediate and significant.

Second, Joint Applicants dispute the assertion of the OCC Motion that its intervention will significantly contribute to the full development and equitable resolution of the factual issues, thus failing to meet the standard for grant of the Motion in the exercise of the Commission's informed discretion pursuant to Ohio Rev. Code §4903.22(B)(4). As noted above, its concern regarding the "sheer magnitude" of the requested facility is easily disposed of.

The second proffered basis for OCC's intervention in this proceeding is the Staff Reports filed by Commission Staff in the GCR Audits of Northeast and Orwell in Case

Nos. 10-209-GA-GCR and 10-212-GA-GCR, respectively. OCC contends that “in the context of what is pending in the audits, the PUCO should consider positions of parties as to whether the long term financing arrangements are just and reasonable.” (OCC Motion, Memorandum in Support, p. 4).

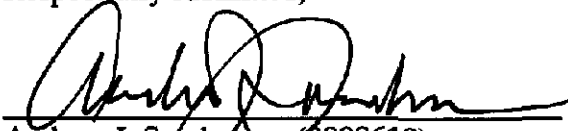
OCC confuses and conflates the standard for the Commission’s consideration of an application for approval of a long term debt issuance under Ohio Rev. Code §4905.41 with the standard governing the Commission’s consideration of an application for an increase in rates pursuant to Ohio Rev. Code §4909.18. Under Section 4909.18, it is the Company’s burden to demonstrate that its proposed rate increases are just and reasonable. In contrast, the Commission can authorize a long term debt issuance under section 4905.41 (A) when it determines that the utility has sustained its burden to prove that the issuance is “necessary” (1) for the acquisition of property, construction, completion, extension, renewal or improvement of its facilities or services; or (2) for the reorganization of its indebtedness and capitalization, the discharge or lawful refunding of its obligation, or the reimbursement of moneys actually expended for such purposes or other moneys in the treasury expended for such purposes. The Commission Staff is completely capable of ensuring that the Joint Applicants have kept their accounts and vouchers of such expenditures to enable the Commission to ascertain the amount and purposes of such expenditures.

Joint Applicants note that OCC’s motion to intervene in Case Nos. 10-209-GA-GCR and 10-212-GA-GCR has been granted and OCC is participating in those consolidated proceedings. Clearly, OCC has the ability to protect the interests it identifies in its Motion and Memorandum in Support in those proceedings, and in any

subsequent rate proceeding brought pursuant to Ohio Rev. Code §4909.18. Those are the appropriate proceedings in which to do so.

For all the foregoing reasons, Joint Applicants request that the Motion to Intervene filed by the Office of Consumers' Counsel be denied.

Respectfully submitted,




Andrew J. Sonderman (0008610)  
Kegler Brown Hill & Ritter LPA  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215  
(614) 462-5496 (direct)  
(614) 464-2634  
asonderman@keglerbrown.com  
Counsel for Joint Applicants

#### **CERTIFICATE OF SERVICE**

The undersigned counsel for Joint Applicants hereby certifies that the foregoing Memorandum in Opposition has been served on the following counsel electronically on this 31st day of January, 2011:

Stephen A. Reilly  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
[stephen.reilly@puc.state.oh.us](mailto:stephen.reilly@puc.state.oh.us)

Joseph P. Serio, Counsel of Record  
Larry S. Sauer  
Kyle L. Verrett  
Assistant Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)  
[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us)  
[verrett@occ.state.oh.us](mailto:verrett@occ.state.oh.us)

  
Andrew J. Sonderman