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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code.	PUCO Case No. 10-1261-EL-UNC

OHIO PARTNERS FOR AFFORDABLE ENERGY'S APPLICATION FOR REHEARING

Ohio Partners for Affordable Energy ("OPAE") hereby applies for rehearing of the Opinion and Order issued by the Public Utilities Commission of Ohio ("Commission") on January 11, 2011 in this proceeding concerning the application of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") for administration of the Significantly Excessive Earnings Test ("SEET") made pursuant to Ohio Revised Code ("R.C.") Section 4928.143(F) and Rule 4901:1-35-10, Ohio Administrative Code. OPAE submits that the Commission's January 11, 2011 Opinion and Order is unreasonable and unlawful in the following particulars:

1) The Commission's Opinion and Order is unreasonable and unlawful pursuant to R.C. Section 4928.143(F) because it rejects the reasonable and lawful benchmark return on equity ("ROE") of a comparable group of companies for CSP of 9.58%, establishes a comparable group ROE benchmark in a range between 10% and 11%, and then establishes an excessive ROE benchmark for CSP at the top of the Commission's range, i.e., 11%. Opinion and Order at 21.

2) The Commission's Opinion and Order is unreasonable and unlawful pursuant to R.C. Section 4928.143(F) because it rejects the

reasonable and lawful SEET threshold range of 11.58% to 13.58% and the use of a 200-400 basis point adder to the benchmark ROE of the comparable group of companies of 9.58% to establish significantly excessive earnings. Opinion and Order at 24.

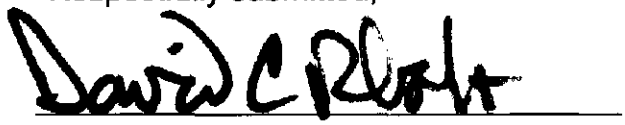
3) The Commission's Opinion and Order is unreasonable and unlawful *pursuant to R.C. Section 4928.143(F) in that the Commission found* that "utility specific factors related to investment requirements, risk and investor expectations" resulted in a 60% adder to the mean of *the comparable group of companies, which yielded an unreasonable* and unlawful SEET threshold of 17.6%. Opinion and Order at 25-27.

4) The Commission's Opinion and Order is unreasonable and unlawful pursuant to R.C. Section 4928.143(F) in that it excluded off-system sales margins from the SEET analysis. Opinion and Order at 29-30.

5) The Commission's Opinion and Order is unreasonable and unlawful because it did not make the refund required by R.C. Section 4928.143(F).

The reasons for granting this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,



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OHIO PARTNERS FOR AFFORDABLE ENERGY' MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING

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1) **The Commission's Opinion and Order is unreasonable and unlawful pursuant to R.C. Section 4928.143(F) because it rejects the reasonable and lawful benchmark return on equity ("ROE") of a comparable group of companies for CSP of 9.58%, establishes a comparable group ROE benchmark in a range between 10% and 11%, and then establishes an excessive ROE benchmark for CSP at the top of the Commission's range, i.e., 11%. Opinion and Order at 21.**

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 Intervenors") presented the testimony of J. Randall Woolridge who computed a benchmark return on equity ("ROE") for a group of comparable public companies and adjusted the benchmark ROE for the capital structure of 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 and adjusted the

benchmark ROE for the capital structure of CSP. Tr. II at 314-317. The adjusted benchmark ROE for CSP was 9.58%.

The Commission rejected the Joint Intervenors' comparable group of companies because, according to the Commission, it was developed from an electric only proxy group without any direct relationship to the electric utility, and, most significantly, again according to the Commission, produces the same comparable group of companies for all Ohio electric utilities. Opinion and Order at 21. The Commission then accepted the Staff of the Commission's ("Staff") comparable benchmark ROE in the general higher range of between 10 and 11%. Opinion and Order at 20-21. The Commission then found that the benchmark at the top of the range, 11%, was warranted, rather than the Staff's recommended 10.7%.

The Commission should have accepted the Joint Intervenors' benchmark ROE of 9.45% for 2009 for the group of comparable public companies and the adjusted benchmark ROE for CSP of 9.48%. The Joint Intervenors' witness Dr. Woolridge started his analysis with an electric only proxy group but he also developed a group of four business and financial risk indicators to use in screening for a group of comparable publicly traded companies that have similar business and financial risk characteristics to his electric utility proxy group. When the screens were applied, it produced another 30 companies for the comparable group and when added to the proxy group, produced a comparable set of 45 companies. Jt. Ex. 1 at 12-13.

The Commission's criticism of the Joint Intervenors' comparable group is without foundation. First, the comparable group is properly a group of companies, including, but not all utilities, that have similar business and financial risk characteristics of electric utilities. Given the distinctive risk profiles of public

utilities, it is not surprising, nor is it inappropriate, that most of the comparable companies are public utilities. Dr. Wooldridge's analysis complies with R.C. Section 4928.143(F) because it compares publicly traded companies, including utilities, that face comparable business and financial risks as CSP. Dr. Woolridge also adjusted to account for differences in the financial risk between CSP and the comparable companies, making his analysis between CSP and the group even more comparable. The end result, a benchmark ROE for CSP of 9.58%, should have been accepted by the Commission.

Moreover, the Commission's selection of 11%, the very top of the range of the Commission's comparable group benchmark ROE, only serves to thwart the application of the SEET as a check against significantly excessive earnings by the utility. The Commission's adoption of an ROE benchmark for CSP at the very highest point in the Commission's range has no other purpose ultimately than to limit the amount of earnings that the Commission considers significantly excessive. The proper operation of the SEET does not allow for such transparent gaming on the part of the Commission to reduce the amount of significantly excessive earnings that should be refunded to customers. The Commission should grant rehearing and adopt the lawful and reasonable benchmark ROE of 9.45% for 2009 for the group of comparable public companies and the adjusted benchmark ROE for CSP of 9.48% as recommended and supported by the Joint Intervenors.

2) **The Commission's Opinion and Order is unreasonable and unlawful pursuant to R.C. Section 4928.143(F) because it rejects the reasonable and lawful SEET threshold range of 11.58% to 13.58% and the use of a 200-400 basis point adder to the benchmark ROE of the comparable group of companies to establish significantly excessive earnings. Opinion and Order at 24.**

After he calculated the adjusted benchmark ROE for CSP of 9.58%, the Joint Intervenors' witness Dr. Woolridge added an 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. Above the 200 basis point safe harbor, the earnings are excessive. The SEET threshold ROE for CSP is in the range of 11.58% (200 basis points above 9.58%) to 13.58% (400 basis points above 9.58%). Earnings above 11.58% or 13.58% should have been considered significantly excessive. Tr. II at 314-317; Joint Intervenors' Ex. 1 at 23; Joint Intervenors' Ex. 1A at JRW-7. CSP's earned return on equity of 20.84% is clearly far outside the range and clearly significantly excessive.

Just as the Commission rejected the Joint Intervenors' development of the comparable group of companies, the Commission also rejected the Joint Intervenors' SEET threshold range of 11.58% to 13.58%. The Commission did not believe that the use of a 200-400 basis point adder to the benchmark ROE of the comparable group of companies was "optimally related to the purpose of the SEET." Opinion and Order at 24. This was determined in spite of the fact that the Commission itself established the 200 basis point safe harbor provision for the SEET.

Instead of using the 200-400 basis point adder, the Commission followed the position taken by its own Staff, which recommended that the threshold ROE be expressed as a percentage of the comparable group companies' ROE. Staff advocated a 50% adder to the comparable group of companies' ROE to establish the SEET threshold. The Commission found that the Staff's use of a percentage of the average of comparable companies more appropriately related to the purpose of the SEET. This is apparently because the Commission does not view the purpose of the SEET to be a protection of consumers against a utility's significantly excessive earnings. The Commission found that while the SEET is to be a statutory check on rates that result in excessive earnings, the Commission was also concerned that the utility operate successfully, maintain financial integrity, attract capital and compensate its investors for the risk assumed. Opinion and Order at 25. The Commission found that the Staff's proposal created "symmetry" with the Commission's obligations to the utility.

The intent of the SEET is to protect consumers against significantly excessive earnings by a utility. R.C. 4928.143(F). Ignoring the purpose of the statute, the Commission actually thwarted its purpose and intent to protect consumers. The Commission transparently went out of its way to protect the utility from the statutorily required refunds. The Commission should grant rehearing and find that the SEET threshold ROE for CSP is in the range of 11.58% (200 basis points above 9.58%) to 13.58% (400 basis points above 9.58%). Earnings above 11.58% or 13.58% should have been considered significantly excessive. Tr. II at 314-317; Joint Intervenors' Ex. 1 at 23; Joint Intervenors' Ex. 1A at JRW-7. CSP's earned return on equity of 20.84% was clearly far outside the range and clearly significantly excessive. The Commission's "obligations" to the utility and need for symmetry serve no other

purpose here than to deny CSP's customers the protections of R.C. 4928.143(F). The Commission is without authority to thwart the purpose of R.C. 4928.143(F) and to deny customers its protections.

3. The Commission's Opinion and Order is unreasonable and unlawful pursuant to R.C. Section 4928.143(F) in that the Commission found that "utility specific factors related to investment requirements, risk and investor expectations" resulted in a 60% adder to the mean of the comparable group of companies, which yielded an unreasonable and unlawful SEET threshold of 17.6%. Opinion and Order at 27.

The Commission did not stop at its finding adopting the Staff's use a 50% adder to the comparable group of companies' benchmark ROE to establish the SEET threshold. The Commission unreasonably and unlawfully found that the Staff's 50% adder should be adjusted even further upward. The Commission found that the appropriate percentage to be added to the mean of the comparable group companies was 60%, which yielded a SEET threshold of 17.6%. Opinion and Order at 27. The Commission made this leap due to "utility specific factors" of the utility's actual performance or factors unrelated to the ESP. The Commission considered utility specific factors related to investment requirements, risk and investor expectations. Opinion and Order at 25.

The Commission found that CSP continues to make "extensive" capital investments in the state of Ohio, that CSP demonstrated that it is "committed to spending the projected capital budget for 2010"; that CSP is facing various business and financial risks; that CSP is committed to innovation, in particular its gridSmart program; and that CSP made efforts to advance Ohio's energy policy. Opinion and Order at 25-26. The Commission also stated that electric utilities are not assured of recovery of their generation assets due to the change in the regulatory environment, the prospect of future industry restructuring and carbon

regulation. The Commission stated that market prices for generation-related services are volatile. The Commission also mentioned the "challenge of fulfilling the various mandates of SB 221, within the context of a rapidly changing electric market." Opinion and Order at 26. The Commission referred to the benchmark requirements in the areas of energy efficiency and peak demand response and CSP's proposal to provide $20 million in funding to a solar project in Cumberland, Ohio. However, the Commission also acknowledged that this solar project was only in the early stages of development and might not actually be a commitment. Should this project not move forward, the Commission required the $20 million be spent in 2012 on a similar project. Opinion and Order at 27. In the end, all these special factors meant that instead of Staff's 50% baseline added, the adder was adjusted upward so that the Commission found the appropriate percentage to be added to the mean of the comparable group companies was 60%, which yielded the SEET threshold of 17.6%. Opinion and Order at 27.

The Commission's findings with regard to the 60% adder are both unreasonable and unlawful. The Commission should only have considered CSP's capital requirements for future **committed** investments in Ohio that would occur **during the period of the current electric security plan ("ESP")**, which lasts through the end of 2011. For example, with regard to the solar project mentioned by the Commission, it is only now in the development stages and cannot be considered a committed investment. Moreover, if the solar project is actually constructed, it is not expected that work on the project will begin until 2012. Because construction on the project will not begin until 2012, after the ESP period in this case, the Commission should not have considered this project. With regard to the gridSmart project and future environmental investments, these capital projects also extend beyond the ESP period. Moreover, like the solar

project, the environmental investments and gridSmart are not "committed" investments. These projects are so far from being committed that CSP cannot even provide the capital budget requirements for these projects, nor can the Commission assess a value to these projects for purposes of the SEET. Future committed investments do not include any investment that CSP merely intends to make at some time in the future. Committed must mean an actual commitment.

In addition, capital investments that are funded by third parties, including the federal government, or funded by customers through Commission-approved riders, do not merit any increase to the ROE threshold for purposes of the SEET. For example, in 2009, CSP received approval for federal grant funding of $75 million from the U. S. Department of Energy for the Ohio gridSmart demonstration program. CSP also requested that the Commission approve CSP's continued implementation of the enhanced gridSmart initiative based on CSP being award the $75 million and an additional non-affiliated in-kind contribution of $10.85 million. Therefore, CSP will be receiving $85.85 million from the government and other sources. *In the Matter of the Application of Columbus Southern Power Company to Update its gridSmart Rider,* Case No. 10-164-EL-RDR, Finding and Order at 1, 11-12 (August 11, 2010). CSP also will seek to recover both a return of and a return on its investments in the solar project, future environmental compliance and the gridSmart project. Tr. IV at 693-694. Therefore, with all these funding sources available to CSP, including the government and ratepayers, the Commission should not have considered these projects in the SEET analysis.

CSP itself did not contend that its 2010 and 2011 capital investment was anything extraordinary. Only the Commission apparently believes that the capital investments are exceptional. To put some reality into its belief, the Commission

should have considered the money CSP invested for capital commitments for the baseline year under review, 2009. In 2009, the spending was at a level of $280.11 million. Jt. Ex. 2 at 29. In reality, expenditures are expected to decline in 2010 to $256.1 million and to decline even further in 2011 to $186.96 million. Jt. Ex. 2 at 29, Ex, JH-1 attached to CSP Ex. 6. CSP's forecasted construction expenditures in 2010 and 2011 are below its actual level of construction expenditures in 2007-2008. Therefore, CSP's future capital commitments are projected to be much less than in year 2009, the year that its earnings were significantly excessive. When considering that these investments for 2010 and 2011 are not actually even committed in any event, it makes no sense for the Commission to have increased the earnings threshold as a result of these projects.

Consideration of capital requirements of future committed investments should have been limited to the investments during the period of the ESP and not beyond the ESP. Future committed investments should not reflect business as usual because business as usual does not merit any adjustment to the threshold of excessive earnings. Future committed investments that are being funded or will be funded by governments or non-affiliated in-kind contributions do not merit any increase in the threshold of excessive earnings. Future committed investment that are being funded or will be funded by customers through riders do not merit any increase in the threshold of excessive earnings. There should have been no payment of future construction costs with excess earnings. 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 have been no upward adjustment in the SEET or a reduction in refunds for capital expenditures. Joint Intervenors' Ex. 2 at 29-30. The actual committed

capital investments for 2010 and 2011 support a finding by the Commission that the threshold ROE for this proceeding should have been at the lower range. It argued for the 200 basis point adder to the ROE, which amounts to 11.58%.

Finally, there should have been no 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 $92.138 million in Provider of Last Resort revenues in 2009. Joint Intervenors' Ex. 2 at 30. Increasing the range defining the earnings threshold or settling on a high point within the range was not warranted for shopping risk. The Commission has now compensated CSP twice for shopping risk, first through the POLR revenue and then again through the SEET.

Thus, the Commission has thwarted the return to customers of significantly excessive earnings as the Ohio General Assembly intended. It is fundamentally inconsistent with R.C. 4928.143(F) to give excess profits to the utility to fund future construction projects, which are funded by other sources including ratepayers in any event, rather than refund the excess profits to consumers. The intent of the SEET is to protect consumers, not to benefit the utility by pre-funding its construction costs or compensating it for risks it does not face. Jt. Ex. 2 at 30. Significantly excessive earnings are not to help finance future investment projects or otherwise compensate a utility for some unforeseen risk. Upon a finding of excessive earnings, the Commission must comply with the statute. The Commission must return to consumers the entire amount of the excess profit by prospective adjustments.

4. The Commission's Opinion and Order is unreasonable and unlawful pursuant to R.C. Section 4928.143(F) in that it excluded off-system sales margins from the SEET analysis. Opinion and Order at 29-30.

The Commission determined that it would exclude off-system sales and the portion of generation that supports off-system sales from the SEET analysis. The Commission reduced CSP's earnings to exclude off-system sales and similarly adjusted the calculation to account for that portion of the generation facilities that support off-system sales. This led to a recalculation of CSP's ROE to 19.73%. Opinion and Order at 30.

The Commission should not have excluded off-system sales from 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 these earnings from off-system sales from the SEET analysis means that the Commission is comparing only 87.9% of CSP's earnings to 100% of the earnings of the comparable companies. Joint Intervenors' Ex. 2 at 21-23. Excluding CSP's off-system sales biased CSP's earnings downward in comparison to the group of comparable companies used to determine the SEET earnings threshold.

The Commission's exclusion of off-system sales revenues biased the SEET in favor of CSP in other ways as well. The Commission recalculated the off-system sales revenues to exclude the portion of generation that supports off-system sales. The adjustment to the denominator from all of CSP's equity capitalization to only the generation-related component of equity capitalization meant that there was a mismatch where the off-system sales margins are totally

removed from the numerator but only partially removed from the denominator. Total equity capitalization should have been used. The record was insufficient to allow the Commission to make the correct calculations when it determined to exclude off-system sales. Given the lack of record that demonstrated the correct exclusion of off-system sales, the Commission should have found that no exclusion be made. Because CSP has the burden of proof in this proceeding, the failure of the record to provide for a correct calculation for the exclusion of off-system sales should not have been a benefit to CSP. All of CSP's earnings including off-system sales should have been judged against the earnings of the companies in the comparable group.

5. The Commission's Opinion and Order is unreasonable and unlawful because it did not make the statutory refund required by R.C. Section 4928.143(F).

CSP's earned ROE for 2009 was 20.84%. The Commission's earned ROE for 2009 for CSP including its adjustment for off-system sales was 19.73%. The Commission's threshold ROE for the 2009 SEET, including its 60% adder, was 17.6%. The difference between the 19.73% and the 17.6% resulted in a refund to customers of $42,683,000. Opinion and Order at 35.

The customer parties in this case 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.

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. In short, from a proper and lawful refund of $145.483 based on significantly excessive earnings threshold of 13.58%, the Commission ordered a refund of a mere $42,683,000, over $100 million less than the refund should have been.

The Commission should not have allowed CSP to retain such a large portion of the refund that the statute requires be returned to consumers. The statute directs the Commission to return to consumers the amount of the significantly excessive earnings. The Commission's decision to allow CSP to retain such a large portion of the refunds, over $100 million, effectively returned the amount of the excess earnings 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 American Electric Power ("AEP") East power pool. The 2009 gross profit margin on sales to Ohio consumers by CSP and OP 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 Intervenors' 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 Intervenors' Ex. 2 at 21.

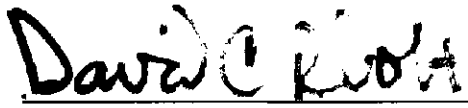
These significantly excessive earnings, allowed under the current ESP, must be returned to CSP's ratepayers in accordance with Ohio law. To follow the

law, the Commission should have made the refunds recommended by the Joint Intervenors and other customer parties whose recommended refund reflects a benchmark ROE of 9.55% adjusted for CSP to 9.58%. .

The Commission unlawfully and unreasonably refused to return to customers the significantly excessive earnings of CSP as the Ohio General Assembly intended. R.C. Section 4928.143(F). It is fundamentally inconsistent with the statute to allow CSP to retain over $100 million in significantly excess earnings, rather than to refund the significantly excess earnings to consumers.

Thus, the Commission should have found reasonable and lawful the Joint Intervenors' 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, 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 Intervenors' Ex. 2 at 17. These significantly excessive earnings, allowed under the current ESP, must be returned to CSP's ratepayers in accordance with Ohio law. R.C. Section 4928.143(F). Upon a finding of significantly excessive earnings, the Commission must comply with the statute. The Commission should grant rehearing and return to consumers the entire amount of CSP's significantly excessive profits by prospective adjustments.

Respectfully submitted,



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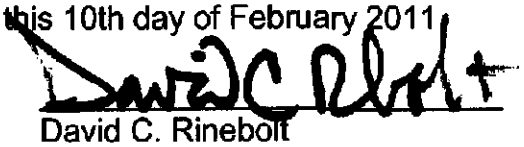
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing and Memorandum in Support was served electronically upon the following parties identified below in this case on this 10th day of February 2011.



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