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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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. )

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APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
OHIO ENERGY GROUP AND  
THE APPALACHIAN PEACE AND JUSTICE NETWORK

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February 10, 2011

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The Office of the Ohio Consumers' Counsel ("OCC") (representing 1.2 million residential customers), the Ohio Energy Group ("OEG") (representing 22 of Ohio's most energy-intensive industries) and the Appalachian Peace and Justice Network ("APJN") (a not for profit organization whose members include low-income customers in southeast Ohio) (collectively "Customer Parties") each respectively apply for rehearing of the January 11, 2011 Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO"). Through this Application for Rehearing, the Customer Parties seek to protect the customers of Columbus Southern Power Company ("CSP" or "Company").

Under R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Customer Parties assert that the Opinion and Order was unjust, unreasonable, and unlawful in the following particulars:

1.       The PUCO erred in adopting the PUCO Staff methodology to  
         exclude profits from off-system sales in the calculation of

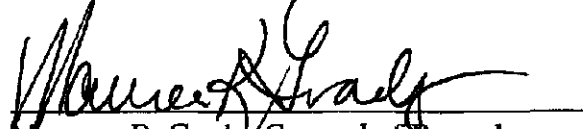
significantly excess earnings, despite such methodology containing mechanical errors, thereby denying customers part of the refund they should have received from CSP.

2. The PUCO erred by unlawfully excluding the profits from off-system sales from the earned return of Columbus Southern Power Company. The exclusion of these profits results in a biased comparison between Columbus Southern Power Company and publicly traded companies that face comparable business and financial risk, and thus is contrary to R.C. 4928.143(F), thereby denying customers part of the refund they should have received from CSP.
3. The PUCO erred by failing to require the Company to comply with its \$1 million commitment to Partnership with Ohio initiative for the benefit of its low-income customers. The Commission's decision was unreasonable and inconsistent with R.C. 4928.02(A) and (L).

An explanation of the basis for each of these grounds for rehearing is set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and the Customer Parties' claims of error, the PUCO should modify its Order.

Respectfully submitted,

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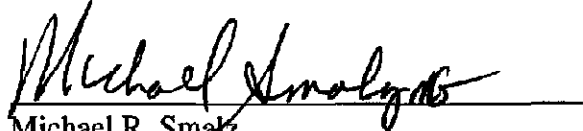
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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

Off-system sales are sales by a utility to third parties that are not Ohio retail customers. They can be called “opportunity” sales—sales that are made possible because the jurisdictional generation plant produces more power than is needed for Ohio retail electric customers. The revenue from such sales is recorded in FERC Account 447—Sales for Resale. But CSP’s off-system sales, even if reflecting power that exceeds the needs of retail customers, come from generation plant that was built for the benefit of Ohio customers. And, in this regard, CSP’s jurisdictional customers have paid CSP a return on CSP’s plant investment and a return of the costs of such generation assets. In 2009, CSP’s earnings from off-system sales were \$32.977 million, while CSP’s total earnings were \$271.504 million.<sup>1</sup> Consequently, 12.1% of CSP’s total earnings in 2009 were derived from off-system sales.<sup>2</sup>

At the evidentiary hearing, the Company proposed to exclude the profits of off-system sales from its earned return on equity (“ROE”). PUCO Staff Witness Cahaan took issue with the Company’s exclusion and testified that the Company’s adjusted ROE

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<sup>1</sup> Opinion and Order at 23.

<sup>2</sup> Joint Ex. 2 at 23.

calculation was incorrect.<sup>3</sup> Staff proposed to adjust both the net income of CSP and its equity capitalization, to reflect the complete impact of off-system sales on the Company's ROE.<sup>4</sup>

The Customer Parties had objected to excluding the profits of off-system sales in the Company's earned return on equity.<sup>5</sup> However, Customer Parties, on brief, advocated for the use of Staff's methodology as a starting point, but pointed out that Staff's methodology understated the Company's earned return.<sup>6</sup> However, the correct quantification was not been made by any witness.<sup>7</sup> Thus, the Customer Parties argued that the Commission should order no exclusion given the lack of a record that demonstrates the correct exclusion and given the Company's failure to meet *its* burden of proof, as set forth in R.C. 4928.143(C)(1).<sup>8</sup>

The Commission in its Order determined that off-system sales should be excluded from the Company's earned return on equity. It also concluded that it needed to "correct" the equity effect of the exclusion, thus rejecting the Company's quantification.<sup>9</sup> It then adopted the recalculated return on equity offered by Staff Witness Cahaan.

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<sup>3</sup> Staff Ex. 1 at 19-21.

<sup>4</sup> Staff Ex. 1 at 18-22 (Cahaan).

<sup>5</sup> See Joint Ex. 2 at 23.

<sup>6</sup> Customer Parties' Brief at 29-31.

<sup>7</sup> Mr. Cahaan's Exhibit 3 would have to be modified to eliminate the step in which he multiplies the common equity capitalization times a production plant ratio of 51.5%. Additionally, Mr. Cahaan should have calculated the off-system sales margins in the denominator as a % of total earnings, not total revenues. The 13.9% figure used in the denominator of Cahaan Exhibit 2 should have been 12.15%, consistent with Mr. Cahaan's use of 12.15% in the numerator. This too has an effect on the ultimate adjusted ROE.

<sup>8</sup> Id.

<sup>9</sup> Opinion and Order at 30 (Jan. 11, 2011).

## II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. This statute provides that within thirty (30) days after an order is issued by the Commission “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” Furthermore, the application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” *Id.*

In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.” *Id.* If the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same \*\*\*.” *Id.*

OCC, APJN, and OEG each participated in this case. Customer Parties thus meet the statutory conditions that apply to an applicant for rehearing under R.C. 4903.10. Accordingly, Customer Parties respectfully request that the Commission hold a rehearing on the matters specified below.

## III. ARGUMENT

- A. **The PUCO erred in adopting the PUCO Staff methodology to exclude profits from off-system sales in calculating significantly excess earnings, despite such methodology containing mechanical errors, thereby denying customers part of the refund they should have received from CSP.**

As discussed above, the Commission in its Order determined that it needed to “correct” the equity effect of the excluding the profits from off-system sales, thus

rejecting the Company's quantification.<sup>10</sup> It then adopted the recalculated return on equity offered by Staff Witness Cahaan. The result was overstating the impact of excluding off-system sales, thereby diminishing the potential refund of excessive earnings to customers.

The PUCO should grant rehearing on this issue and determine that no exclusion can be made for profits from off-system sales, as the record does not support a correct exclusion. Otherwise the Company is rewarded for its failure to place evidence in the record to allow the PUCO to correct the exclusion.<sup>11</sup>

The granting of rehearing would be consistent with the Commission's determination in AEP's ESP proceeding<sup>12</sup> where, in setting the baseline fuel adjustment clause, the lack of a record on actual costs was cited as a basis for adopting an alternative position. It was the intervenors there who had asked for the PUCO to order the Company to produce actual costs. The PUCO nonetheless would not do so and the absence of actual costs became one of the reasons why the PUCO rejected the intervenors' position.<sup>13</sup>

Similarly here, there is no record that shows the mechanically correct off-system sales exclusion. The absence of a correct calculation should be reason to reject the Staff's calculation and in turn, make no exclusion of profits from off-system sales. The

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<sup>10</sup> Opinion and Order at 30 (Jan. 11, 2011).

<sup>11</sup> Mr. Cahaan's Exhibit 3 would have to be modified to eliminate the step in which he multiplies the common equity capitalization times a production plant ratio of 51.5%. Additionally, Mr. Cahaan should have calculated the off-system sales margins in the denominator as a % of total earnings, not total revenues. The 13.9% figure used in the denominator of Cahaan Exhibit 2 should have been 12.15%, consistent with Mr. Cahaan's use of 12.15% in the numerator. This too has an effect on the ultimate adjusted ROE.

<sup>12</sup> See *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Opinion and Order at 19 (Mar. 18, 2009).

<sup>13</sup> Id. But see concurring opinion of Commissioner Roberto, Entry on Rehearing at 1 (July 23, 2009) (which would have required the Company to produce actual costs).

record should stand as it is and on that basis, profits from off-system sales must be excluded. When profits from off-system sales are included, the true magnitude of CSP's significantly excess profits is revealed—and that should result in greater refunds to customers. This result would be consistent with a determination that the Company failed to meet *its* burden of proof, which burden is explicitly stated under R.C. 4928.143(C)(1).

If the Commission does not grant rehearing as requested above, it should nonetheless correct the off-system sales adjustment, consistent with the Customer Parties' recommendation. The Commission's action here caused the refunds of excessive earnings to customers to be understated. While Mr. Cahaan's methodology can be used as the starting point, it must be adjusted. Specifically, Mr. Cahaan's calculation improperly scaled down the adjustment to the denominator from all of CSP's equity capitalization to only the generation-related component of equity capitalization. Thus, there is 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 in the calculation because total earnings were used to determine the relationship between off-system sales margins and total margins. Mr. Cahaan's quantification, though conceptually correct, contains a computational error that understates the resulting earned return on equity in favor of CSP, as pointed out in Customer Parties' brief. The need to correct this adjustment is pressing, as customers are being denied part of the refund due to them and, going forward, others will likely rely upon the PUCO's holding here as precedent.

- B. The PUCO erred by unlawfully excluding the profits from off-system sales from the earned return of Columbus Southern Power Company. The exclusion of these profits results in a biased comparison between Columbus Southern Power Company and publicly traded companies that face comparable business and financial risk, and thus is contrary to R.C. 4928.143(F), thereby denying customers part of the refund they should have received from CSP.**

The PUCO determined in its Order that the profits from off-system sales should be excluded from CSP's earned return on equity (which means customers are denied receiving a greater refund from CSP).<sup>14</sup> It appears that the basis for the PUCO's exclusion is that the earnings from off-system sales were not the result of adjustments to the ESP. It concluded that where "it can be shown that the electric utility received a return on its OSS, which if included in the calculation could unduly increase its ROE for purposes of SEET comparisons, OSS margins and the related equity in generation facilities should be excluded from the SEET calculation."<sup>15</sup>

As discussed above, in 2009, CSP's earnings from off-system sales were \$32.977 million, while CSP's total earnings were \$271.504 million.<sup>16</sup> Consequently, 12.1% of CSP's total earnings in 2009 were derived from off-system sales.<sup>17</sup> Therefore, if earnings from off-system sales are ignored, as proposed by the Company,<sup>18</sup> the Commission is comparing only 87.9% of the Company's earnings with 100% of the earnings of the comparable group. As Witness Kollen testified for the Customer Parties, "the exclusion of the OSS earnings from the CSP SEET earnings would bias the Company's earnings

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<sup>14</sup> Opinion and Order at 30.

<sup>15</sup> Id.

<sup>16</sup> Id. at 23.

<sup>17</sup> Joint Ex. 2 at 23.

<sup>18</sup> Company Ex. 6 at 7.

downward in comparison to the group of comparable companies used to determine the SEET earnings threshold.”<sup>19</sup> A comparison of this nature would be biased, meaningless, asymmetrical, and contrary to the language of 4928.143(F).

The statute requires “the earned return on common equity of the electric distribution utility” to be compared with the “return on common equity that was earned during the same period by [comparable] publicly traded companies, including utilities\*\*\*.” R.C. 4928.143(F). AEP’s proposal to compare only 87.9% of CSP’s profits<sup>20</sup> with 100% of the earnings of the companies in the comparable group, results in a biased comparison that does not comply with the statute. The effect of the Commission’s ruling is that customers did not receive the full refund they were due under R.C. 4928.143(F). Customers should have received an additional \$22 million over and above the \$42.6 million refund ordered.<sup>21</sup>

- C. The PUCO erred by failing to require the Company to comply with its \$1 million commitment to Partnership With Ohio initiative for the benefit of its low-income customers. The Commission’s decision was unreasonable in this respect and inconsistent with R.C. 4928.02(A) and (L).**

On November 30, 2010, AEP Ohio submitted a Joint Stipulation and Recommendation in this case that was signed by the Kroger Company, Ormet Primary Aluminum Corporation, the Ohio Hospital Association (“OHA”), the Ohio Manufacturers’ Association (“OMA”), and the PUCO Staff. Among other things, the Stipulation contained four commitments under Section IX, characterized as

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<sup>19</sup> Joint Ex.2 at 23.

<sup>20</sup> The volume of CSP’s off-system sales in 2009 was 5,363,938 mWh, compared to retail sales in Ohio of 20,673,469 mWh. See Joint Ex. 2 at 23.

<sup>21</sup> Unadjusted return on equity (20.84) minus adjusted return (19.73) multiplied by 20.039 equals \$22.24 million. See Joint Customer Parties Ex. 2, LK-2, which explains that every 1% excessive return on equity equals a refund of \$20.039 million, which quantification was not rebutted by the Company.

“Miscellaneous Terms and Commitments.” Three of the four commitments were payments to OHA, OMA, and Kroger. The fourth commitment under that section of the Stipulation was a \$1 million commitment to Partnership with Ohio initiative, for the benefit of the Company’s low income customers.

On December 16, 2010, AEP filed to withdraw the stipulation. In its notice of withdrawal it uni-laterally and voluntarily agreed to fulfill certain obligations under the stipulation which included three of the four obligations listed in Section IX of the Stipulation. AEP did not agree to fulfill its obligation to contribute \$1 million to the Partnership with Ohio initiative.

The Commission in its Opinion and Order ordered the Company to comply with the commitments it set forth in its notice of withdrawal. Thus, the Company was not ordered to fund the Partnership with Ohio initiative, the sole commitment that could have provided much needed assistance to CSP’s low income customers.

This assistance is especially crucial at this time. Columbus Southern Power disconnected 34,322<sup>22</sup> residential customers for non-payment during 2010 representing approximately 5.5% of their customer base. In addition, as of December 2010, there were 47,743 customers on the Percentage of Income Payment Plan PIPP Plus program – a 17.7 percent increase from the previous December.<sup>23</sup>

PIPP Plus is a low-income payment plan that enables customers whose household income is at or below 150 percent of the federal poverty guidelines to pay 6 percent of

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<sup>22</sup> According to the twelve month summary of disconnection data provided to the PUCO Staff in the OSCAR Reports.

<sup>23</sup> According to the CSP OSCAR Report provided to the PUCO Staff, there were 40,579 PIPP customers in December 2009 and 47,743 PIPP customers in December 2010.  $47,743 - 40,579 = 7,164 / 40,579 \times 100 = 17.7\%$ .

their monthly income for electricity rather than the actual bill. The increase in PIPP Plus enrollments is indicative of an increasing number of customers who are unable to pay the electric bill due to the slow economic recovery in the state and the projected reductions in government assistance. For example, the unemployment level in Ohio is currently at 9.6 percent<sup>24</sup> - a 23.1 percent increase from just two years ago.<sup>25</sup> The poverty level in Ohio is at 13.7 percent – the highest level experienced since 1994.<sup>26</sup>

Against this economic back drop, Ohio is experiencing significant reductions in the level of Low Income Home Energy Assistance Program (LIHEAP) funding that is available to help low-income families. Current federal funding for LIHEAP is at \$3.9 billion<sup>27</sup>, a significant reduction from the \$5.1 billion funding level that states have realized over the last two years. Ohio has received authorization to spend approximately \$110 million<sup>28</sup> compared with the approximate \$246 million that was available last year.<sup>29</sup> Recent reports by the National Energy Assistance Director's Association NEADA project a 5.5% increase in the number of Ohio households that will apply for LIHEAP this year compared with last year.<sup>30</sup>

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<sup>24</sup> December 2010 Unemployment Data  
<http://jfs.ohio.gov/RELEASES/unemp/201101/unemprelease.asp>.

<sup>25</sup> The December 2008 Unemployment level was at 7.8%.  
<http://jfs.ohio.gov/RELEASES/unemp/200901/UnempPressRelease.asp>.

<sup>26</sup> The State of Poverty in Ohio: Building a Foundation for Prosperity, Community Research Partners, January 2010, Page V. [http://www.oaca.org/index\\_198\\_2165961434.pdf](http://www.oaca.org/index_198_2165961434.pdf).

<sup>27</sup> <http://www.hhs.gov/news/press/2011pres/01/20110112a.html>.

<sup>28</sup> [http://www.acf.hhs.gov/news/press/2011/liheap\\_allocation.html](http://www.acf.hhs.gov/news/press/2011/liheap_allocation.html).

<sup>29</sup> [http://development.ohio.gov/cms/uploadedfiles/Development.ohio.gov/Divisional\\_Content/Community/Office\\_of\\_Community\\_Services/2010%20HEAP%20Public%20Hearing.ppt#330,1,Slide 4](http://development.ohio.gov/cms/uploadedfiles/Development.ohio.gov/Divisional_Content/Community/Office_of_Community_Services/2010%20HEAP%20Public%20Hearing.ppt#330,1,Slide 4).

<sup>30</sup> <http://www.neada.org/communications/press/2011-02-06LIHEAP11ProjServed.pdf>.

Given these dire circumstances that exist for low-income customers in Ohio, it was unreasonable for the Commission to allow the Company to break its commitment to low income customers when the assistance was sorely needed. Moreover, the Commission's action serves to undermine the policy objectives of R.C. 4928.02. Specifically R.C. 4928.02 (A) establishes that the policy of the State is to "ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory and reasonably priced retail electric service." Additionally, subdivision (L) of R.C. 4928.02 establishes that another policy of the state is to "protect at-risk populations." CSP's low income customers are the at-risk population in this proceeding.

In AEP Ohio's ESP proceeding, this Commission stated that these policy statements, as codified by the General Assembly in Chapter 4928, set forth important objectives which the commission must keep in mind when *considering all cases filed pursuant to that chapter of the code.*<sup>31</sup> The SEET proceeding was such a proceeding, falling under Chapter 4928 of the Code. Here, the Commission failed to consider these important objectives, thereby undermining R.C. 4928.02(A) and (L). Thus in order to comply with these provisions, and render a reasonable decision, the PUCO should reverse its ruling, and order AEP Ohio to keep its stated commitment to the Partnership with Ohio initiative.

#### IV. CONCLUSION

For all the reasons discussed above, the Commission should grant rehearing on the Customer Parties' claims of error and modify the January 11, 2011 Opinion and Order consistent with Ohio law and Commission precedent. The PUCO should provide

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<sup>31</sup> AEP-Ohio ESP Cases, Case No. 08-917-EL-SSO, Opinion and Order at 12-13 (March 18, 2009).

CSP's customers with the greater refund intended under Ohio law in this circumstance where CSP has significantly excess earnings.

Respectfully submitted,

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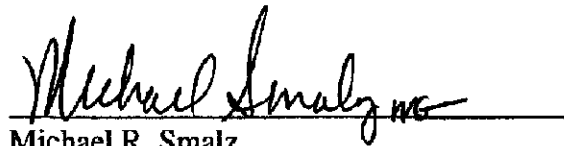
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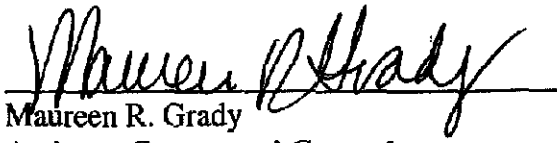
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Application for Rehearing by the Customer Parties was served on the persons listed below via electronic mail this 10<sup>th</sup> day of February, 2011.

  
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