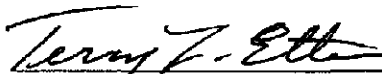


Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment) Case No. 10-268-EL-FAC
Clauses for Columbus Southern Power) Case No. 10-269-EL-FAC
Company and Ohio Power Company.)

MEMORANDUM IN SUPPORT

On March 18, 2009, the Commission issued its Opinion and Order in the Companies' first ESP cases ("ESP Order"). In the ESP Order, the Commission approved FACs for the Companies, including an annual audit of the accounting of the FAC costs. On January 7, 2010, the Commission issued an Entry in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC ("09-872/873") selecting Energy Ventures Analysis, Inc. ("EVA") to perform the annual FAC audits under the Companies' first ESP.

On January 25, 2011, the Commission issued an Entry in 09-872/873 and this case directing EVA to complete its audit of the Companies' FAC and submit a draft audit report to Staff by May 12, 2011. The Entry also directed EVA to file its final audit report by May 26, 2011. Although the Companies did not increase rates in their filing because of the cap on FAC rates in the ESP case, the result of the audit could ultimately affect the rates paid by the Companies' residential customers for electric service.

Although the January 25 Entry was issued in 09-872/873 as well as in this case, it does not appear that the cases have been consolidated. OCC is a party in 09-872/873,² and thus is filing to intervene in this proceeding out of an abundance of caution. OCC

² 09-872/873, Finding and Order (January 7, 2010) at 3.

has authority under law to represent the interests of all of the Companies' approximately 1.2 million residential electric distribution customers, pursuant to R.C. Chapter 4911.

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. The interests of Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding involving an audit of the FAC portion of the rates they pay for electric service. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission 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 is representing the Companies' residential customers in this case involving the Companies' FAC, which could affect the rates residential customers pay for electric service. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that utility rates should be no more than what is reasonable and lawful under

Ohio law and that utility service should be adequate under Ohio law. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that 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 advocate for residential utility customers, OCC has a very real and substantial interest in this case involving the Companies' FAC, which could affect the rates residential customers pay for electric service.

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 already has addressed and that OCC satisfies.

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 in that it uniquely has been designated as the state representative of the interests of Ohio's

residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

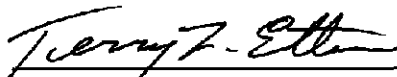
Further, as discussed herein, OCC was granted intervention in the FAC cases in which EVA was chosen to conduct the audit for the instant proceeding. OCC's interest in this proceeding is the same as OCC's interest in 09-872/873.

Moreover, the Supreme Court of Ohio 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.³

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 residential customers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



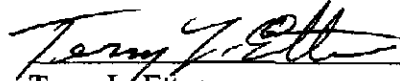
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³ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶ 13-20 (2006).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic mail, this 25th day of February 2011.


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