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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of )  
The Timken Company and the Ohio Power )  
Company for Approval of a Unique )  
Arrangement for The Timken Company's )  
Canton Ohio Facilities. )

Case No. 10-3066-EL-AEC

2011 MAR -4 PM 5: 27

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PUCO

**JOINT MEMORANDUM CONTRA TO**  
**OCC'S MOTION FOR CONTINUANCE AND EXTENSION OF TIME**  
**AND**  
**REQUEST TO SET A DATE CERTAIN FOR TIMKEN EXECUTIVE OFFICER'S**  
**WITNESSES**

In its Motion for Continuance and Extension of Time and Request for Expedited Ruling ("Motion for Continuance"), the Office of the Ohio Consumers' Counsel ("OCC") implies that delaying the evidentiary hearing currently scheduled for March 28 in this proceeding to May 2, 2011 will have no impact on The Timken Company ("Timken").<sup>1</sup> There is no factual support for such a statement. Timken has argued vigorously in this proceeding that its Application should be approved without a hearing and as expeditiously as possible.<sup>2</sup>

Timken filed the Application in December of 2010, with the expectation that the revised power rates would be in effect for the majority of 2011. Delays in the implementation of the power rates as proposed by OCC would not only have financial impacts on Timken but could jeopardize the capital investments that are contingent on prompt approval of the Application. Thus, when OCC on January 10, 2011 requested for the first time to set the hearing no sooner than May, Timken and AEP objected on the grounds that a May hearing would push the rate relief back to the fourth quarter.<sup>3</sup>

Now that the OCC has once again raised the request for a May hearing, we must revisit the impact of this delay. When one considers the amount of time for a hearing; initial briefs;

<sup>1</sup> OCC Motion for Continuance at fn. 6, p. 4.

<sup>2</sup> See Joint Memorandum Contra, January 20, 2011, at p. 2, 5-6.

<sup>3</sup> *Id.*, p. 2

reply briefs; the Commission's decision; petitions for rehearing and the Commission's ruling on rehearing, a May hearing will result in a final order in the fourth quarter at the earliest. Timken and the Ohio Power Company ("OPCo") raised this concern in their Joint Memorandum Contra to OCC's January 10, 2011 initial request for a May hearing. The Attorney Examiner, having read the original objections by Timken and OPCo, refused OCC's request and set the hearing for March 28, 2010. This hearing date is very important to Timken because that schedule has the potential for producing a final order well before the fourth quarter of 2011.

The March hearing date is also very important to Timken because its proposed unique arrangement involves significant and critical business decisions that must be implemented quickly. The purpose of the proposed unique arrangement is to assist an Ohio employer to secure the rate relief necessary to make a major manufacturing facility investment. Business decisions of this nature must be executed quickly and can be jeopardized by unnecessary regulatory delays. Indeed, both the General Assembly and the Commission have recognized that unique arrangements must be approved on a fast track, amending Section 4905.31, Revised Code, and adopting rules to set up a comment period of 20 days with no mandatory hearing requirement for unique arrangement applications.

OCC's second request for a May hearing will create an unnecessary regulatory delay on Timken's Application. OCC must show good cause for delaying the hearing to May, but in support of its request only states that "[a]n additional five weeks should give adequate additional time to OCC to complete its investigation of the Timken application and allow it the opportunity to also complete its investigation of the Globe/Solsil applications." (OCC Motion for Continuance at 3.) These reasons are not sufficient to warrant a five week continuance in this proceeding.

First, a review of the comments filed in this proceeding indicates that the issues for hearing are limited. As discussed in detail in Timken's motion to limit the scope of the evidentiary hearing, filed in conjunction with this response, three parties have intervened in this proceeding, the Industrial Energy Users of Ohio ("IEU-Ohio"), the Ohio Energy Group ("OEG") and OCC. IEU-Ohio and OEG have both filed pleadings stating they are taking no position in this proceeding.<sup>4</sup> Only OCC has indicated that it will actively participate in the evidentiary hearing. Further, according to OCC's filed comments and its Motion for Continuance, the focus will be on the delta revenue impact on residential ratepayers.<sup>5</sup> This issue should not be factually intensive since the Application has a maximum discount cap<sup>6</sup> so there will be no need to run numerous scenarios to appraise the maximum delta revenue exposure. As to the remaining comments raised by OCC, most are policy issues, such as stripping the Provider of Last Resort Fee out of the delta revenue recovery. While such an issue may be a significant portion of the OCC brief, it will not require discovery or lengthy cross examination preparation.

Second, contrary to OCC's claim at page 2 of its Motion, there is no "outstanding" discovery that has not been answered. OCC has served two sets of discovery on Timken and OPCo. At the time OCC filed its Motion for Continuance, both Timken and OPCo had answered the first set of discovery and had not answered the second set of discovery (OPCo's responses to the second set were not yet due). It is important to note, though, that the time for responses to the second set of discovery had not elapsed at the time of OCC's Motion for Continuance. Since then, both Timken and OPCo have timely served their discovery responses to OCC's second set of discovery. No other discovery from OCC has been served at this time.

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<sup>4</sup> See OEG Notice, January 26, 2011 and see IEU-Ohio Comments, January 25, 2011.

<sup>5</sup> See e.g. OCC Motion for Continuance at 2.

<sup>6</sup> See Application at ¶ 30.

OCC also complained of a delay in receiving an unredacted copy of the Application. The delay was due to difficulties in reaching a suitable confidentiality agreement. Once an agreement was reached, Timken provided an unredacted copy to OCC the same day that OCC signed the protective agreement. Further, the concepts in the redacted Application have been available since December and OCC will have a month with the unredacted Application before the hearing. OCC has no basis for delaying the hearing in this matter beyond March.

Although Timken opposes OCC's proposed May hearing date, Timken does recognize that another hearing is scheduled on the same day as the March 28 hearing in this proceeding. To accommodate OCC, Timken is agreeable to moving the start of this hearing from March 28 to March 29. Unfortunately, Timken's witnesses, James A. Griffith, President and CEO of The Timken Company; C. Andrew Black, Manager, Technical Services of The Timken Company; and Salvatore J. Miraglia, Jr., President – Steel, The Timken Company, are not available in the month of April for business reasons so delay beyond March 29 is not possible. Though the Timken Company is headquartered in Ohio, it has customers, suppliers and manufacturing facilities all over the world. These key executives currently have prescheduled business travel plans and business meetings located out of the country during the month of April.<sup>7</sup> Timken requests that because of time constraints on these key executives and the fact that they are often out of state, a day certain of March 29, 2011 be set for their testimony.

In closing, OCC has the burden of proof to show why a continuance beyond that established by the Attorney Examiner should be granted. OCC has not met that burden and has failed to explain why it cannot prepare for what should be a short evidentiary hearing in the Timken proceeding as well as prepare for the Globe/Solsil hearing over the next four weeks.

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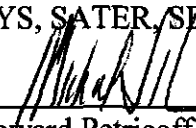
<sup>7</sup> The OCC has corrected the error in its Motion for a Continuance in which it stated that Timken's potential witnesses will be on vacation for April. See letter filed March 3, 2011.

More important, the purpose of the General Assembly's revisions to Section 4905.31, Revised Code, was to make it attractive for businesses to expand in Ohio. It was the expectation of the General Assembly that the Commission would review the unique arrangements in business time. Delaying the proceeding an additional five weeks on what should be a one day hearing because there are other unrelated matters going on at the Commission is not what the General Assembly had in mind.

WHEREFORE, the Motion for a Continuance of the Hearing beyond March 29, 2011 should be denied. In addition, OCC's continued request to shorten the time for discovery responses (OCC Motion for Continuance at fn 8, p. 3) should be rejected for the reasons set forth in Timken's and OPCo's Joint Memorandum Contra filed on January 20, 2011.

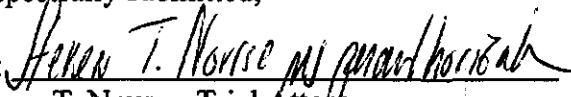
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## CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2011, a copy of the foregoing document was served by electronic mail and U.S. Mail postage prepaid upon:

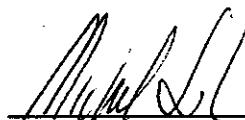
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